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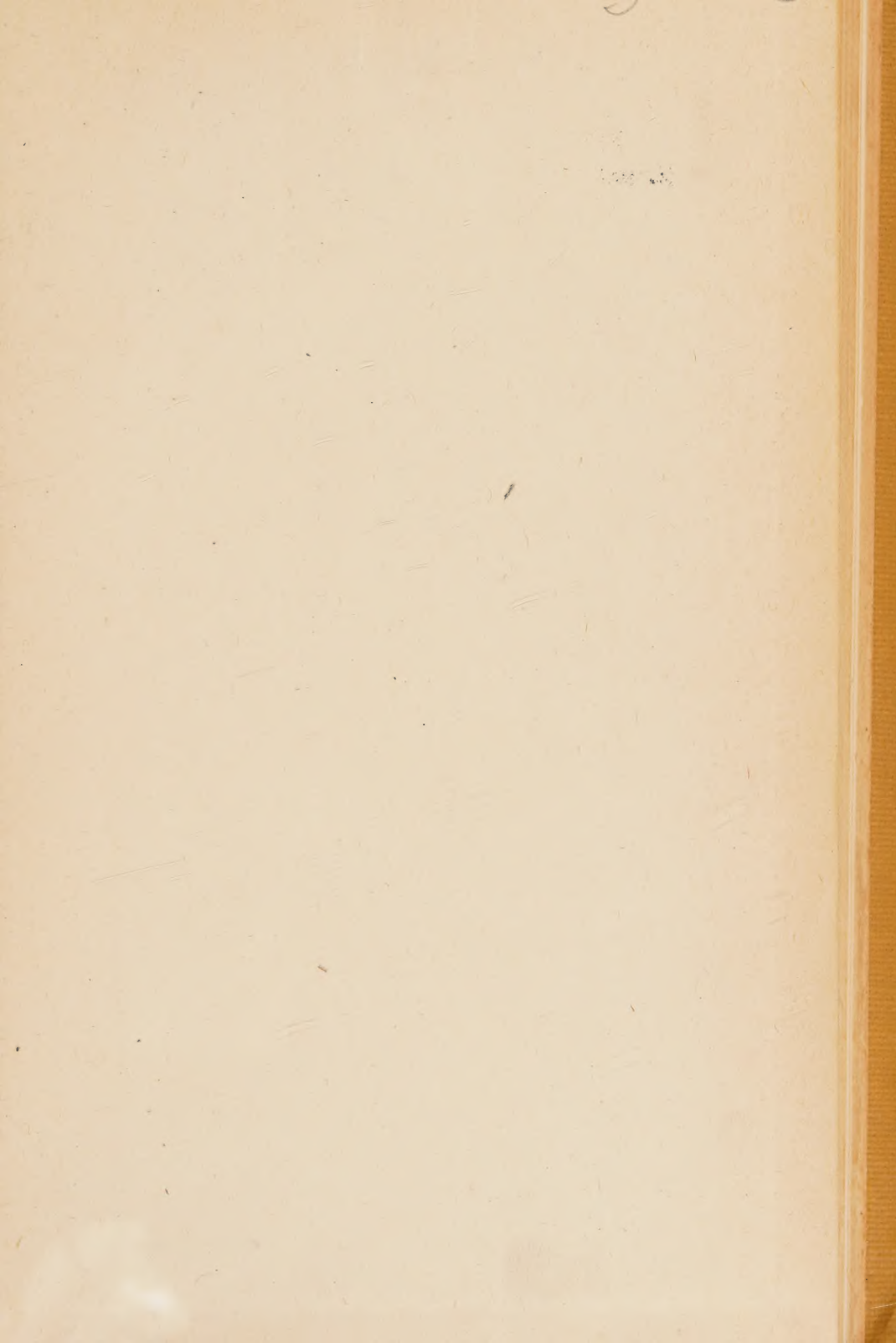


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THE NOTARIES' MANUAL

CONTAINING
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AS TO THEIR
POWERS, RIGHTS, DUTIES AND LIABILITIES

UNDER THE LAWS OF
ARKANSAS, KANSAS, MISSOURI, OKLAHOMA
AND TEXAS

TOGETHER WITH

ALL NECESSARY FORMS, INCLUDING FORMS FOR TAKING DEPOSITIONS
AND ACKNOWLEDGMENTS UNDER THE LAWS OF ALL THE
STATES AND TERRITORIES AND IN THE
FEDERAL COURTS

BY

BENJAMIN F. REX
OF THE ST. LOUIS BAR

SIXTH EDITION BY

J. H. McMILLAN
OF COMANCHE, TEXAS

KANSAS CITY, MISSOURI
VERNON LAW BOOK CO.

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PREFACE TO SIXTH EDITION.

In writing the sixth edition of this work, the state of Oklahoma has been included, making the work now cover five states, viz., Arkansas, Kansas, Missouri, Oklahoma and Texas. The subject matter has been treated, as before, by chapters arranged in alphabetical order. The text of the fifth edition has been carefully examined by the author. Parts that, by reason of our ever-changing laws, have become obsolete have been omitted; and changes that have become necessary, because of recent enactment, or decisions of our higher courts, have been made. Twenty-eight new sections have been added to the text, and the citation of authorities has been made much more full and complete than in any former edition. No pains have been spared, by author or publishers, to bring the work strictly up-to-date and make it, for the notary in his many and varied official duties, a plain, practical and safe guide.

J. H. McMILLAN.

Comanche, Texas, June 24, 1913.

PREFACE TO FIFTH EDITION.

In revising and rewriting this work it has been the intention of the author and publishers not only to bring the book down to date, but also to simplify it both in form and subject-matter. With this object in view the fifth edition has been made to apply to only four, instead of seven states viz., Arkansas, Kansas, Missouri and Texas, but all necessary matter for those four states has consequently been treated much more fully and comprehensively than ever before. The subject-matter has been treated of by chapters arranged in alphabetical order.

Articles or sections of the statute law of each state bearing upon the duties of notaries, have when necessary, been copied in full, with references showing each article or section number and to which state it belongs; and when the law of any state varies from the general rule the variance has been carefully and separately set forth and explained.

In addition to bringing the subject matter of the former editions down to date there has been added a chapter on the general duties, powers and liabilities of notaries public, a chapter on contracts including necessary forms, a chapter on conveyances including forms, and a chapter of forms for taking depositions including forms for caption and certificate, deposition envelopes, subpoenas for witnesses and all other forms necessary for the proper taking of depositions to be used in the courts of *all the states and territories and in the federal courts.*

While the lawyer will doubtless find the book a valuable addition to his library, the author has not attempted to write a digest or brief book upon the subjects herein treated,

but has spared no pains in making for the *notary* an up-to-date, plain, practical guide. With this idea before him the author has conformed the present edition to recent legislation, and has carefully annotated and cited text-books and authorities of the different states bearing on the duties, powers and liability of *Notaries Public*, but has avoided citing such authorities as bear only upon complicated questions of practice, and which, though interesting and probably valuable to the lawyer, would be of no practical benefit to the notary, but might, to him, mystify and make dim and uncertain his official pathway.

J. H. McMILLAN.

Comanche, Texas.

ABBREVIATIONS USED IN REFERRING TO STATUTES.

- Kirby's Dig. Ark. Digest of the Statutes of Arkansas, by William F. Kirby, 1904.
- G. S. Kan. General Statutes of Kansas, compiled by C. W. F. Dassler, 1909.
- R. S. Mo. Revised Statutes of Missouri, 1909.
- R. L. Okla. Revised Laws of Oklahoma, 1910.
- R. S. Tex. Revised Civil Statutes of Texas, 1911.
- R. C. S. Tex. Revised Criminal Statutes of Texas, 1911.
- R. C. C. P. Tex. Revised Code of Criminal Procedure of Texas, 1911.

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THE NOTARIES' MANUAL.

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Sec. 1.—Origin and history.—

The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin.¹ In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century.² They were chiefly employed in drawing up legal documents; as scribes or

1. *Gharst v. St. Louis Transit Co.*, 115 Mo. App. 403, 91 S. W. 453.

2. *Teutonia Loan Co. v. Turrell*, 19 Ind. App. 852; 65 Am. Rep. 49.

scriveners they took minutes and made short drafts of writings, either of a public or private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained. Such office existed in England before the conquest, and in this country from its earliest colonial days it is frequently referred to in history. The office was known in Shakespeare's time, for we find in the "Merchant of Venice," "go with me to the notary and seal me there your single bond." It has been said that a notary public is an officer known to the law of nations, hence certificates and records of his official acts are received as evidence in all the courts of the world. He is certainly recognized by the law merchant, and his acts are to some extent indispensable to its efficiency, as in protesting foreign bills for non-acceptance or non-payment.³

At a very early period in England, notaries were employed to attest or authenticate instruments of more than ordinary importance and solemnity. An instance of this is mentioned in the Parliamentary Rolls of the ninth year of the reign of Henry V where two notaries attested an instrument of importance relating to the affairs of Lucie, Countess of Kent. The office has come down to us from ancient times changed only as the necessities of commerce and public convenience have demanded.⁴

Sec. 2.—Appointment of notaries in England.—

Emperor Charlemagne, in 803 A. D., required his deputies to nominate notaries, and in 805 A. D. required Bishops, Abbots and Counts to each have a notary and invested their acts with public authority. Later the King only appointed notaries, but by degrees the Pope assumed the right to appoint to all faculties, and as a notary was

3. *Sonfield v. Thompson*, 42 Ark. 46, 48 Am. Rep. 49; *Tete's Succession*, 7 La. Ann. 95.

4. *Burk's Office and Practice of a Notary*, sec. 6. *Colquhoun's Roman Law*, sec. 86. *Am. and Eng. Ency of Law*, title, "Notary."

included in such he assumed the right to appoint notaries. He was deprived of this right in England by statute of Henry VIII. Notaries are now appointed by the "Court of Faculties." There is a rule that in order to practice as a notary in London or within ten miles thereof a person must have served for seven years under a qualified notary in actual practice, and at a greater distance he must produce a certificate of clerkship of five years to a notary, or an attorney and notary.⁵

Sec. 3.—Appointment in the United States.—

In most of the states notaries public are appointed by the governor, sometimes with and sometimes without the advice and consent of the senate. In some of the states the applicant must produce a certificate from the Circuit or District Judge, that he is a man of good moral character and qualified to fill the office. In some of the states, clerks of the court, justice of the peace, mayors and recorders are *ex officio* notaries public. In all the states except Connecticut, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Vermont and West Virginia, notaries are required to execute an official bond varying in amount from five hundred to five thousand dollars, conditioned for the faithful performance of their duties as notaries public, which bond must be approved by proper authority and may be sued upon by any person injured by the failure, neglect or inability of the notary in discharging his duties, in like manner as suits upon other official bonds.

Ex officio notaries, except in the states above mentioned, are required to execute notarial bonds, in addition to their official bonds, in like amounts and under the same conditions as notaries by appointment.

A notary who is lawfully such by virtue of his holding some other office has as full power within the states as one by direct appointment; *Willson v. Simpson*, 68 Tex. 306; but *ex*

5. *Eads v. Bishop of Oxford*, Vaugh. 23; *Brooke on Office and Practice of Notaries*, sec. 9. *Proffatt on Notaries*, secs. 5, 11.

officio notaries public, being unknown to the civil law and the law merchant, their acts are not generally recognized in foreign countries.

See PROTEST.

Sec. 4.—Appointment in the District of Columbia.—Powers and duties under United States laws.—

The president of the United States has power to appoint such number of notaries for the District of Columbia as he deems necessary for the business interests of the district; they are appointed for five years, but are removable at discretion; they have the same powers, under the laws of the United States, as notaries appointed by the governors of the different states. By act of congress August 15, 1876, it was provided that notaries public of the several states and territories and the District of Columbia be and they are hereby authorized to take depositions and do all other acts in relation to taking testimony to be used in the courts of the United States, and to take acknowledgments and affidavits in the same manner and with the same effect as commissioners of the United States Circuit Courts may now lawfully do. It is also provided by statute, in all cases in which justices of the peace are authorized to take acknowledgments or affidavits, that the same may be taken by or made before any duly appointed notary public, and when certified to under the hand and official seal of such notary they shall have the same force and effect as if taken or made before such justice of the peace.

Sec. 5.—Who may be appointed.—

To be eligible to the office of notary public a person must be a citizen of the state in which he is to act, and when appointed for a certain county must be a resident of the county for which he is appointed. It has been held that an alien, duly appointed and qualified, is a *defacto* officer.⁶

6. An alien is not qualified to hold the office of notary public, but having been duly appointed and commissioned, and given bond, his acts as such officer are valid. *Wilson v. Kimmel*, 109 Mo. 260, 19 S. W. 24.

In some states a certain length of residence is required. Generally it is not necessary that the person applying should be twenty-one years of age if he be of sufficient maturity and have intelligence and business experience enough to be qualified to act.⁷ The principal question that has arisen in this connection is whether women may be appointed and qualified as notaries. In Alabama and Missouri it is provided by statute that women are eligible to the office; in the latter state females must be eighteen and males twenty-one years of age before they can qualify. Women are appointed and act as notaries public in the State of Texas. There is no statute law in regard to the matter, and the courts of the state have never been called on to pass upon the validity of their acts. In some of the states it has been held that women are not eligible to the office, but usually these decisions have been rendered under some particular statute or provision of a state constitution. Where there are no statutory or constitutional provisions tending to limit the qualifications for holding such offices to men only, it has generally been held that women may be appointed to the office and perform its duties the same as men, and will be governed by the same rules in regard to incapacity, negligence and official misconduct.⁸ The Supreme Court of Massachusetts has held that

7. MINORS:—At common law a minor may be a notary. *United States v. Bixby*, 9 Fed. 78, 10 Biss. 523; *People v. Dean*, 3 Wend. (N. Y.) 438. A notary must be a citizen of the state and reside in the county for which he is appointed. *Am. and Eng. Ency. of Law*, Vol. 16, p. 754. In Maryland and Pennsylvania the applicant must have been a citizen of the state for two years prior to his appointment. Profatt on Notaries, sec. 13.

8. WOMEN MAY BE APPOINTED NOTARIES:—In Connecticut upon the application of a woman for license to practice as an attorney and counselor at law, under a statute providing that the court may grant license to practice as attorneys and counselors at law to such *persons* as shall show themselves qualified under the rules of the supreme court, etc., it was objected that the statute did not authorize the licensing of women, that under the common law of England there

women are not eligible to such office under the common law.^{8a}

Sec. 6.—Powers and duties in general.—

Notaries public have power to take acknowledgments and affidavits, administer oaths, to certify to the truth of certain acts or writings, to protest bills and notes, and to take depositions to be used in the federal courts and in the courts of most of the states.⁹ In some of the states notaries may

was no such thing known as women lawyers, and that the statute in using the word *persons* meant men only. The court held that the word *persons* included both men and women and that the license should be granted. In *Re Hall*, 50 Conn. 131; 47 Am. Rep. 626. The common law of England allowed women to fill any office of an administrative character, the duties of which were such that a woman could perform them. 115 Mass. 602.

Ministerial offices may be granted to women. *Chitty's Prerogatives of the Crown*, sec. 84.

The performance of the duties of a notary are ministerial, and such office may be filled by women. *National Bank v. Conway*, 1 Hughes (U. S.) 37. See, also, *Lynch v. Livingston*, 6 N. Y. 422.

8a. Women are not eligible to the office of notary under the common law, 165 Mass. 599, 43 N. E. 927, 32 L. R. A. 350. See, also, *State v. Davidson*, 92 Tenn. 531, 22 S. W. 203, 20 L. R. A. 311.

9. Authority to take acknowledgments is statutory. *Wilson v. Kimmel*, 109 Mo. 260, 19 S. W. 24; *Berdsey v. Rogers*, (Tex. Civ. App.) 26 S. W. 841. So is authority to take affidavits, *Teutonia Loan Co. v. Turrell*, 19 Ind. App. 469, 49 N. E. 852, 65 Am. Rep. 419.

The common law, law merchant and civil law, recognize the authority of a notary public to protest bills and notes. *Nichols v. Webb*, 8 Wheat. (U. S.) 326, 5 L. Ed. 628.

Authority to take deposition is statutory. Most of the states authorize notaries both within and without the state to take depositions, and the courts will admit a deposition taken in another state, before a notary, without proof of his authority to take such deposition under the laws of his own state. *Midland Steel Co. v. Citizens Nat. Bank*, 34 Ind. App. 107, 72 N. E. 290; *Exparte Mallinkrodt*, 20 Mo. 493.

The supreme court of Montana has held that a notary of another state has no authority to take a deposition to be used in the courts of Montana. *McCormick v. Largey*, 1 Mont. 158.

act as justices of the peace and have a certain judicial jurisdiction.¹⁰ Their duties are usually ministerial, though some of the ordinary duties of the notary are at least *quasi* judicial, as, for instance, in taking the acknowledgment of a stranger he acts in a judicial capacity in determining whether or not such person is as a matter of fact the person he represents himself to be; and in taking the acknowledgment of a married woman he acts in a judicial capacity in explaining the nature and legal effect of the instrument, and in determining whether or not she signs the same willingly. In taking depositions he acts in a judicial capacity in determining whether or not the witness is privileged from answering certain questions.¹¹

Sec. 7.—Character of duties, diligence required, liability.—

All duties required of notaries are of an official character and the same diligence in the administration of the powers of the office is required by substantially the same rules of responsibility that govern in other official transactions. When a notary acting in a judicial capacity honestly makes a mistake, he can not be held liable in damages. In punishing witnesses for disobeying subpoenas, or refusing to answer questions, or in ruling as to whether or not a witness is privileged from answering certain questions, the notary is acting in a judicial capacity, and if he acts in good faith

10. Notaries who are *ex officio* justices of the peace are judicial officers and have criminal jurisdiction prescribed by statute. *Douglas v. State*, 117 Ala. 185, 23 So. 142; *Carroll v. State*, 58 Ala. 396. They perform some of the duties of judicial officers in Louisiana. *Stork v. American Surety Co.*, 119 La. 713, 33 So. 742; *Schmitt v. Drouet*, 42 La. Ann. 1064, 8 So. 396, 21 Am. St. Rep. 408.

11. Taking deposition is a judicial act. *Swink v. Anthony*, 96 Mo. App. 420, 70 S. W. 272; *Gharst v. St. Louis Transit Co.*, 115 Mo. App. 403, 91 S. W. 453; *Stimeman v. Smith*, 100 Fed. 600. It has been held in Kansas that the taking of a deposition is not a judicial act. *In re Huron*, 58 Kan. 152, 42 P. 574, 62 A. S. R. 614, 36 L. R. A. 822.

in the disinterested exercise of his functions and within the limit of his power and jurisdiction, he can not be held liable for mistakes, either personally or on his official bond;¹² but otherwise if he exceeds his power or jurisdiction, or acts willfully and maliciously or with fraudulent intent.¹³

Sec. 8.—Acting in ministerial capacity.—

In ministerial acts, however, such as certifying to affidavits, acknowledgments and protests, and to the authenticity of records and writings, the notary is required to use integrity, diligence and skill; and, he and the sureties on his official bond are liable to parties who employ him, or who are directly interested in his official acts, for injuries occurring to them from his dishonesty, negligence or unskillfulness.¹⁴

If he certifies that he performed an act, within the pur-view of his official duties, which he did not perform, the

12. NOTARY ACTING IN JUDICIAL CAPACITY:—In the case of *Commonwealth v. Haines*, 97 Pa. St. 228, 39 Am. Rep. 805, in an action brought against a notary public for falsifying an acknowledgment, it was held that the notary acting in his judicial capacity would be presumed to have acted on proper information, and the burden was upon the plaintiff to prove a willful dereliction of duty. See, also, *Henderson v. Smith*, 26 W. Va. 829, 53 Am. Rep. 139; *Scotten v. Fegen*, 62 Iowa, 236, 17 N. W. 491.

13. He will be liable in damages if he acts fraudulently or maliciously. *McCutchen v. Windsor*, 55 Mo. 149; *Dritt v. Snodgrass*, 66 Mo. 286; *Yates v. Lansing*, 5 Johns 282; *Jenkins v. Waldron*, 11 Johns 113; *Wheeler v. Patterson*, 1 N. H. 88; *Curtiss v. Colbey*, 39 Mich. 456.

14. A notary, by accepting the office and entering upon the discharge of its duties, holds himself out to the world as a person competent to perform the business of his office and thereby contracts with those who employ him that he will perform his duties, as such officer, with integrity, diligence and skill. *Fogarty v. Finley*, 10 Cal. 239, 70 Am. Dec. 714.

The condition of a notary's bond that he will well and faithfully perform his duties, undertakes both his good faith and his competency. *Weintz v. Kramer*, 44 La. Ann. 35, 10 So. 416. See, also, *Bank of Mobile v. Marston*, 7 Ala. 108; *Bowling v. Arthur*, 34 Miss. 41.

parties injured thereby may look to his bond for redress;¹⁵ or if he certifies to the acknowledgment of a deed or mortgage, and the grantor named therein did not in fact execute the instrument and the title or security thereby fails, he and his sureties will be liable to the grantee in damages;¹⁶ or if he certifies to his personal knowledge of the grantor and such grantor in fact be a stranger, with whom the officer is not acquainted, he does so at his peril. It has been held that, in such cases, it is the notary's duty to call witnesses to identify the party and that his failure to do so is gross negligence.¹⁷

If he fails to protest a bill or note left with him, for that purpose, and the endorsers or sureties are thereby discharged, he is liable to the payee or holder or any party thereto who is injured by such neglect.¹⁸

15. Sureties are liable for notary certifying to the acknowledgment of a mortgage he knew to be forged. *Rochereau v. Jones*, 29 La. Ann. 82. So, if he certifies to an acknowledgment, when the parties executing it did not in fact appear before him. *People v. Colley*, 39 Mich. 456. See, also, *People v. Bartels*, 138 Ill. 322, 27 N. E. 1091.

16. *People v. Colbey*, 39 Mich. 456; *Bales v. Commonwealth*, 29 Ky. Law Rep. 908, 96 S. W. 802.

17. A notary who certifies that he is personally acquainted with the grantor, when he is not, is liable in damages if the grantor is an imposter. If he is not personally acquainted with the grantor, he should call in witnesses to identify him. *State v. Meyer*, 2 Mo. App. 413.

18. Giving notice of dishonor is a notary's duty, for neglect of which he is liable in an action on his bond. *Williams v. Parks*, 63 Neb. 747, 89 N. W. 395; *Bowling v. Arthur*, 34 Miss. 41. He must present a foreign bill in person. *Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275, but if the notary goes to the office of the acceptor during business hours and finds such office closed, he is not bound to make further search. *Sulzbacher v. Charleston Bank*, 86 Tenn. 201, 6 S. W. 129, 6 A. S. R. 828. Where the statute only authorizes the notary to protest instruments and does not provide any fee for giving notice, he is not bound to give notice when protesting notes or inland bills. *Swayes v. Britton*, 17 Kan. 625.

In some jurisdictions, it has been held to be an official duty of a notary to explain to illiterate persons conveyances and contracts drawn by him to which they are parties, and, if he undertakes such explanation, it is certainly his duty to give a true and correct explanation.¹⁹

In order to render a notary and his sureties liable, the plaintiff must show that the act or negligence of the notary is the proximate cause of his injury.²⁰ And, it seems, that he must also show that he was directly interested in the subject matter about which the notary acted or was called on to act.²¹

Sec. 9.—Integrity, diligence and skill defined.—

It has been seen, in the preceding section, that the notary, in performing his official duties, is required to act with integrity and to use diligence and skill; that he may better understand his duties the following definitions of these terms are here given. Integrity, though given by lexicographers as a synonym of honesty, means more than honesty: it means freedom from bias as well as fidelity or hon-

19. If a notary prepares a conveyance, at the request of the grantee, and the grantor is illiterate, it is his duty to explain to such grantor the legal effect of such conveyance. *Tete's Succession*, 7 La. Ann. 95. See, also, *Ayotte v. Boucher*, 9 Can. Sup. Ct. 460.

20. A notary falsely certified that certain persons appeared before him and swore that they were soldiers and were entitled to additional homestead rights. The plaintiff, relying on such certificates, bought said pretended rights. Held, that the notary and his sureties were not liable, that the proximate cause of the injury was the failure of the pretended right and not the certificate, that the affidavits were merely preliminary to the allowance of the right by the federal government. *Smith v. McGinnis*, 75 Ark. 472, 89 S. W. 91; *Coffin v. Bruton*, 78 Ark. 162, 95 S. W. 462; *Dwire v. Woulfe*, 40 La. Ann. 46, 3 So. 360; *Warren Bank v. Parker*, 8 Gray (Mass.), 221.

21. The plaintiff must show that he was directly affected by the notary's act. *State v. Plass*, 58 Mo. App. 148.

A second assignee, of a leasehold, cannot recover for fraudulent certificate of assignment to his assignor. *Ware v. Brown*, 29 Fed. 170.

esty of purpose.²² Diligence means "Application to business of any kind, constant and painstaking effort to accomplish what is undertaken."²³ Another definition is, "The degree of care and attention which the law exacts from a person in a particular situation or given relation to another person."²⁴ Skill is defined as, "The art of doing a thing as it ought to be done."²⁵ And another definition is, "The familiar knowledge of any art or science, united with readiness and dexterity in execution or performance, or in the application of the art or science to practical purposes."²⁶

Sec. 10.—Negligence defined.¹—

There are many definitions of the term negligence, varying with the circumstances of different cases wherein the term is defined. Some are short and incomplete; others more full and complete, two or three of which are herein given. Mr. Cooley in his work on "Torts" defines negligence to be, "The failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury."²⁷ The United States Supreme Court has defined it to be, "The failure to do what a reasonable and prudent person would

22. Webster's Unabridged Dict. The meaning of the word integrity should not be restricted to what is generally understood by the word honesty, although they are generally given by lexicographers as synonyms. *Root v. Davis*, 10 Mont. 228, 25 P. 125. Integrity means soundness of moral principal. It is used as a synonym for probity, honesty and uprightness in business relations with others. *In re Gordon*, 142 Cal. 125.

23. Bouvier's Law Dict; Cyc. Vol. 14. p. 289. Diligence implies that we shall do those things we ought to do, and leave undone those things we ought not to do. *Grant v. Mosley*, 29 Ala. 302.

24. Bouvier's Law. Dict.

25. Bouvier's Law. Dict.

26. Cyc., vol. 36, p. 463. *Akrige v. Noble*, 114 Ga. 949, 41 S. E. 78.

27. Cooley on Torts, Sec. 630.

ordinarily have done under the circumstances of the situation, or the doing, under the existing circumstances, what such a person would not have done.”²⁸ The supreme court of Kentucky has said, “Negligence, generally speaking, is merely an omission to perform a duty, and is not an affirmative wrongful act.”²⁹ The supreme court of Missouri has said, “Negligence is the failure to use that care which an ordinarily careful and prudent person would exercise under the same or similar circumstances.”³⁰ The same definition has been given by the supreme court of Montana.³¹ One of the courts of civil appeals of Texas has said, “Actionable negligence is an omission to use that degree of care, diligence and skill, which it is one’s legal duty to use for another’s protection, which omission, by a natural and continuous sequence, causes unintended damage to such other.”³²

Sec. 11.—Liability for negligence.—

Notaries are liable, on their official bonds, to those who employ them or for whom they act, for loss or damage, caused by negligence in the performance of their official duties.³³ The failure of a notary to make a proper certificate to an acknowledgment taken by him, is such negligence as will render him liable, on his bond, to a grantee, in the instrument, who is injured thereby.³⁴ So the failure

28. *Baltimore R. R. Co. v. Jones*, 95 U. S. 439, 24 L. Ed. 406.

29. *Schulte v. Louisville & N. R. R. Co.*, 128 Ky. 627, 108 S. W. 941.

30. *Felver v. Central Electric Ry. Co.*, 216 Mo. 195, 115 S. W. 980.

31. *Birsch v. Citizen’s Electric Co.*, 36 Mont. 574, 93 P. 940.

32. *Pullman Co. v. Cavanass*, (T. C. A.), 115 S. W. 980.

33. *Schmitt v. Drouet*, 42 La. Ann. 1064, 8 So. 396, 21 A. S. R. 408; *Fogarty v. Findley*, 10 Cal. 239, 70 Am. Dec. 714.

34. **CERTIFICATE MUST BE IN PROPER FORM AND MUST STATE THE FACTS:**—A notary public, who in taking an acknowledgment fails to certify that the grantor or person acknowl-

to, properly and promptly, protest a note, delivered to him for that purpose, will render a notary liable, on his bond, to the holder, for any loss or damage caused by such failure;³⁵ but, in order to hold a notary liable on his bond, there must be an injury and the negligence of the notary, acting in his official capacity, must be the proximate cause of the injury.³⁶ And a notary cannot be held liable when he acts under the

edging the instrument is known to him, is liable in damages to the grantee who is injured thereby; and it is no excuse that an attorney partially filled the blank certificate. If the notary read it over he was bound to know of the omission, and if he did not read it he is equally guilty of negligence. *Fogarty v. Findley*, 10 Cal. 239; 70 Am. Dec. 714.

35. A notary public is a public officer and is liable to the holder of negotiable paper, that has been intrusted to him for protest, for any failure or negligence in the discharge of his official duty. *Britton v. Niccols*, 14 Otto (U. S.) 757, 26 L. Ed. 917.

The holder of a bill or note is justifiable in giving full credence to a notary's certificate of demand and notice, and may look to the notary to repair any injury, resulting from its falsity. *Bank of Mobile v. Marston*, 7 Ala. 108; *Boling v. Aurther*, 34 Miss. 41; *Bellemire v. Bank of U. S.*, 1 Miles (Pa.) 173.

When the law requires that protests be recorded, a notary is guilty of negligence in failing to make a proper record of his act. *Hyde v. Planters Bank*, 17 La. 560, 36 Am. Dec. 731.

36. If the holder of a bill sustains no loss by a defective protest he has no right of action on the notary's bond. *Franklin v. Smith*, 21 Wend. (N. Y.) 624. Unless substantial damage is shown, nominal damage only can be recovered. *State v. Thompson*, 81 Mo. App. 549; *State v. Plass*, 58 Mo. App. 148.

A, representing himself to be B, acknowledged a forged instrument and borrowed money on it. Held, that the forgery and not the acknowledgment was the proximate cause of the injury, and the notary was not liable. *Oakland Savings Bank v. Murfey*, 68 Cal. 455. See, also, *Coffin v. Bruton*, 78 Ark. 162, 95 S. W. 462, 75 Ark. 472, 89 S. W. 91.

The negligence complained of must be with reference to some official act. *Schmitt v. Drouett*, 42 La. Ann. 1064, 8 So. 396, 21 A. S. R. 408. In Michigan, it has been held that the notary's certificate stating that the grantor was known, when in fact he was not known, was the proximate cause of the injury. *People v. Butler*, 74 Mich. 643.

instruction of a party and the injury or loss occurs by reason of a wrong instruction or misdirection by such party.³⁷ The weight of authority holds that in order to recover damage the injured party must, after he discovers the notary's negligence, use ordinary diligence to protect himself from loss.³⁸

Sec. 12.—Criminal responsibility in Arkansas.—

The statutes of Arkansas provide that, if a notary certifies falsely to an acknowledgment he shall be guilty of forgery. And if he charge, demand or receive fees greater than allowed by statute, or shall demand or receive fees for services he has not performed, he shall forfeit to the party injured or against whom such fees are charged the amount of fees illegally charged and five dollars for each item illegally demanded, charged or received. He is also required to state in every certificate the date his commission expires and the failure to do so is a misdemeanor punishable by fine not exceeding five dollars.³⁹

Sec. 13.—In Kansas and Missouri.—

If a notary exacts illegal fees, or is guilty of willful and malicious oppression, partiality, misconduct or abuse of authority, he is guilty of a misdemeanor, punishable by fine

37. When a notary is instructed by the holder to protest a note on the wrong day, and the liability of the endorser is thereby lost, he cannot be held liable for the damage. He is not presumed to be a lawyer who might reverse or revise the instruction of his employer, and cannot be held negligent in following his employer's instructions. *Emmerling v. Graham*, 14 La. Ann. 390; *Franklin v. Smith*, 21 Wend. (N. Y.) 624; *Commercial Bank of Kentucky v. Varnum*, 49 N. Y. 269.

38. A notary is not liable for negligence in giving a defective notice of protest when the holder can but will not, after discovering such defect, use other means to fix the liability of the endorser. *Franklin v. Smith*, 21 Wend. (N. Y.) 624. See, also, *State v. Thompson*, 81 Mo. App. 549. Holder should not be required to redeem a prior mortgage. *Curtiss v. Colby*, 39 Mich. 456.

39. Kirby's Dig. Ark. secs. 1724, 1888, 5747.

and imprisonment, and forfeits his office. If he makes a false acknowledgment he is declared guilty of forgery in the second degree. The Kansas statutes provide that "if any notary shall neglect or refuse to attach to his official signature the date of expiration of his commission as provided in section one of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars." ³⁹

Sec. 14.—In Oklahoma.—

The statutes of Oklahoma provide, "That no notary public shall be allowed to charge any discharged soldier or seaman, or widow, orphan, or legal representative thereof, any fee for administering any oath or the giving of any certificate for the procuring of any pension, bounty or back pay, nor for administering of any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, or for any services rendered in perfecting any voucher." Charging a fee for any of the services above named is made a misdemeanor, the penalty assessed being a fine of not less than ten nor more than twenty-five dollars.. Notaries are required to add to their official signatures, the date of the expiration of their commissions, and failure to do so is a misdemeanor.⁴⁰

Sec. 15.—In Texas.—

The Texas statutes provide that if a notary shall give a false certificate of acknowledgment or proof, or a false certificate to a deposition, or with fraudulent intent place his signature or seal to an affidavit drawn with blanks in a material part, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. And that if he willfully fails or neglects to keep the record of

39. G. S. Kan. secs. 2609, 3686, 5458; R. S. Mo. secs. 4641, 10712, 10736.

40. R. L. Okla. sec. 3222.

acknowledgments required by law to be kept by him, he shall be punished by fine in a sum not less than one hundred and not more than five hundred dollars. It is also provided that "if any officer authorized by law to demand or receive fees of office . . . shall willfully demand or receive higher fees than are allowed by law, he shall be punished by fine not less than twenty-five nor more than one hundred dollars for each offense." ⁴¹

Sec. 16.—De facto notaries.—

A notary *de facto*, is one who has the reputation of being such officer and who acts under color of appointment or title to the office, but whose appointment is irregular or title to the office not good in point of law.⁴² It has been held that one whose commission is defective is a *de facto* notary.⁴³ Also a woman, duly commissioned and acting though under the laws of the state she be ineligible to the office.⁴⁴ And so an alien, duly appointed and commissioned.⁴⁵ It has also been held that one who acts in good faith, after the vacation of his office or the expiration of his term, is a *de facto* officer though the authorities seem to be conflicting on this question.⁴⁶ One official act, several months after the expiration of his commission, does not make the party act-

41. R. Cr. S. Tex. art. 1000.

42. Bouvier's Law Dict., title, Officer De Facto.

43. Hamilton v. Pitcher, 53 Mo. 334.

44. Voudom v. Meugedoht, 41 Neb. 525, 59 N. W. 800; Chata-nooga etc. Bank v. Smith, (Tenn. Ch. App.) 47 S. W. 1102; Stokes v. Acklen (Tenn. Ch.), 46 S. W. 316.

45. Wilson v. Kimmel, 109 Mo. 260, 19 S. W. 24.

46. The act of a notary who, in good faith, attests an instrument after the expiration of his term is the act of a *de facto* officer. Smith v. Meador, 74 Ga. 416, 58 Am. Rep. 438; Bryan v. Walton, 14 Ga. 185; United States v. Rayburn, 6 Pet. 352, 8 L. Ed. 424; United States v. Ins. Co., 22 Wall. 99, 22 L. Ed. 816. In Texas it has been held that a notary who, by accepting another office, had vacated his office as notary public, had no authority to take a deposition, and a deposition so taken was properly suppressed. Biencourt v. Parker, 27 Tex. 558.

ing a *de facto* officer;⁴⁷ neither can a mere usurper become an officer *de facto*.⁴⁸

Sec. 17.—Acts of *de facto* notaries.—

An official act done by one who is a notary public *de facto* though not *de jure*, can not be collaterally attacked; thus when a person is commissioned, though his appointment was irregular, his acts until his commission is canceled will stand against collateral attack. When a notary in good faith does some act after his commission has expired, the act will stand until a direct proceeding be brought to set it aside. The principle upon which this doctrine rests is the impossibility of one always knowing when an officer's commission expires or his term of office ceases.⁴⁹ When a party is in reputed authority as a notary public, third persons wanting his services as such, are not bound to ascertain the regularity of his appointment or when his commission expires. It is well established that when an individual has been and is acting notoriously as a notary public or other officer, it is *prima facie* evidence of the official character which he assumes, and his commission or appointment need not be produced. The doctrine may be somewhat modified in those states

47. The act of one whose commission had expired and who for several months had not acted nor held himself out as a notary, is not the act of a notary *de facto*. *Sandlin v. Dowdell*, 143 Ala. 518, 39 So. 279; *Hughs v. Long*, 119 N. C. 52, 25 S. E. 743; *Bemier v. Becker*, 37 Ohio St. 72.

48. *Hughs v. Long*, 119 N. C. 52, 25 S. E. 743.

49. When the appointing power has made an appointment, although the person appointed has not the qualifications required by law, the appointment is not therefore void. The person appointed is a *de facto* officer and his acts, in the discharge of the duties of such office, are valid and binding. This is true of the highest and lowest officers "from governor to constable." So far as the public is concerned, their acts are valid and cannot be collaterally impeached. *Wilson v. Kimmel*, 109 Mo. 260, 19 S. W. 24; *State v. Dierbenger*, 90 Mo. 369, 2 S. W. 286; *Hamlin v. Kassafer*, 15 Ore. 456, 15 Pac. 778.

where the statutes require that the certificate of the notary shall show the date of the expiration of his commission.⁵⁰

Sec. 18.—Deputies and clerks.—

In this country, a notary cannot transact official business through a deputy or clerk unless authorized to do so by statute;⁵¹ nor can he act in partnership with another notary in official transactions.⁵²

50. It is settled by a current of authority, almost unbroken, for over five hundred years, that if a person is in possession of an office under color of right, though ineligible, he is an officer *de facto* so far as third persons are concerned. *Stokes v. Acklen*, (Tenn. Ch.), 46 S. W. 316; *Weatherford v. State*, 31 Tex. Cr. 536, 21 S. W. 251, 37 A. S. R. 828.

The act of a notary who, in good faith, attests an instrument after his commission has expired, cannot be collaterally attacked. *Smith v. Meador*, 74 Ga. 416; *United States v. Rayburn*, 6 Pet. 352, 8 L. Ed. 424; *United States v. Ins. Co.*, 22 Wall. 99, 22 L. Ed. 816.

51. In the absence of statutory authority, the duties of a notary must be performed by himself and not by a clerk or deputy. *Ocean Nat. Bank v. Williams*, 102 Mass. 141; *Ellis v. Commercial Bank*, 7 How. (Miss.) 294, 40 Am. Dec. 63. The presentation of a bill must be made by the notary who protests it. *Chenowith v. Chamberlain*, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; *Carter v. Union Bank*, 7 Humph. (Tenn.) 548, 46 Am. Dec. 89; *Adams v. Wright*, 14 Wis. 408.

52. The protest of a bill of exchange must be made by the notary who presents the bill and cannot be made by another, though he also be a notary. *Miltenerberger v. Spauldin*, 33 Mo. 421. Notaries cannot act as partners. *Commercial Bank v. Barksdale*, 36 Mo. 563.

By statute, notaries in New Orleans have been authorized to appoint deputies or clerks. *Buckley v. Seymore*, 30 La. Ann. 1341. It is a custom in New York City for bills and notes to be presented by clerks or deputies. *Commercial Bank v. Varnum*, 49 N. Y. 269.

CHAPTER II.

APPOINTMENT, POWERS AND DUTIES OF NOTARIES PUBLIC UNDER THE STATUTES OF ARKANSAS, KANSAS, MISSOURI, OKLAHOMA AND TEXAS.

Sec.		Sec.	
19.	Appointment of notaries public in Arkansas, Kansas, Missouri, Oklahoma and Texas.	26.	Notarial record in Oklahoma.
20.	Oath and bond.	27.	Notarial record in Texas.
21.	Notarial seals.	28.	Notarial acts as evidence.
22.	The jurat.	29.	Admissibility, how affected.
23.	Notarial records in Arkansas.	30.	Effect of such evidence.
24.	Notarial records in Kansas.	31.	Powers and duties under the statutes.
25.	Notarial records in Missouri.	32.	Power to administer oaths recognized by the United States, etc.
		33.	Extent of other powers.

Sec. 19.—Appointment of Notaries Public in Arkansas, Kansas, Missouri, Oklahoma and Texas.—

In ARKANSAS, KANSAS, MISSOURI and OKLAHOMA the governor may appoint a convenient number of notaries public for each county and incorporated city. They must be citizens of the state and reside in the city or county for which they are appointed.

In KANSAS, if appointed in an incorporated town or city on the line between two counties, they are authorized to act in each county; provided they file the oath and bond required of notaries in each county. In all of said states notaries hold their offices for a term of four years after appointment. Kirby's Dig. Ark. Sec. 5743; G. S. Kan. (1909) sec. 5453; R. S. Mo. sec. 10177; R. L. Okla. sec. 4240.

The statutes of Arkansas and Kansas are silent in regard to age and sex of persons who may be appointed to

this office. In Missouri females over the age of eighteen years may be appointed notaries public. Males must be twenty-one years old. (R. S. Mo. sec. 10177.)

In TEXAS.—The governor may, by and with the advice and consent of the senate, appoint a convenient number of notaries public for each county. The appointments are made during the regular sessions of the legislature and must be approved by the senate.¹ The term is for two years, and all commissions except those of *ex officio* notaries expire on the first day of June after each regular biennial session of the legislature. There is no provision in regard to age or sex of persons eligible to this office. Females have been and are now acting as notaries in this state and so far their acts have not been questioned.

Under the constitution and laws of Texas all justices of the peace are *ex officio* notaries public, their commissions issue when they are elected and qualified, and expire at the expiration of their terms of office. They are required to give bond the same as other notaries. (Sayles' Civ. Stat. arts. 1563, 3503.)

Sec. 20.—Oath and bond.—

In each of the states, notaries are required to take the oath of office prescribed by the laws of the state, and to file a bond with two or more good and sufficient sureties, payable to the governor of the state, conditioned for the faithful performance of the duties of his office.² In Arkansas, Kansas, Oklahoma and Texas the bonds must be in the sum of one thousand dollars. In Missouri the bond must be in

1. In Texas, an appointment and commission by the governor without the advice and consent of the senate is a nullity. *Brown v. S.*, 14 Tex. 478.

2. The condition of the bond, "for the faithful performance of the duties of his office," includes every act which a notary is required or authorized to do by virtue of his office. *Fogarty v. Findley*, 10 Cal. 237; 70 Am. Dec. 714.

the sum of two thousand dollars, and in counties of more than one hundred thousand inhabitants, the bond must be in the sum of five thousand dollars. In Arkansas the bond must be approved by the clerk of the circuit court and filed with the recorder of deeds. In Kansas the bond must be approved by, and filed with, the district clerk of the county. In Missouri the bond shall be approved by, and filed with, the county clerk, except in St. Louis, where the bond must be approved by the clerk of the circuit court. In Oklahoma and Texas the bond shall be approved by, and filed with, the county clerk of the county for which such notary is appointed. (Kirby's Dig. Ark., sec. 5753; G. S. Kan. sec. 5454; R. S. Mo. sec. 10181; R. L. Okla., sec. 4241; R. S. Tex. art. 6003.)

Sec. 21.—Notarial Seals.—

The ARKANSAS statutes require the seal of the notary public to bear the devices presented by the great seal of state, surrounded by the words, "Notary Public, County of —, Ark." A notary may use his private seal until he can provide himself with the official seal above prescribed. (Kirby's Dig. Ark. sec. 5751.)

In KANSAS.—The seal is required to contain only the notary's name and place of residence. He must authenticate all official acts with his seal. (G. S. Kan. sec. 5457.)

In MISSOURI.—The statutes require a seal on which shall be inscribed the name, the words "Notary Public," and the name of the county, or city, and state for which he is appointed. The seal may not be changed during the term of office. (R. S. Mo., sec. 10180.)

In OKLAHOMA.—The notary's seal shall contain his name and place of residence, and he shall authenticate all official acts therewith. He is required to file with the secretary of state his official signature and an impression of his seal. (R. L. Okla., secs. 4241, 4244.)

In TEXAS.—The seal of the notary shall have engraved in the center a star of five points, with the words, "Notary

Public, County of —, Texas," around the margin. (R. S. Tex., art. 6006.)

While the statutes of each of the states, for which this work is written, requires notaries to provide seals to be used in the authentication of their official acts, it is not required that sealing wax be used, as under the old common law;³ but an impress of the seal on wax, attached to the instrument, is sufficient.⁴ The seal must be a notarial seal. The use of some other seal, though used through mistake, is insufficient.⁵ Courts take judicial knowledge of the seals of notaries.⁶

Sec. 22.—The jurat.—

The notaries jurat is his official signature, including the impress upon the instrument of his official seal.⁷ The statutes of Arkansas, Kansas, Missouri and Oklahoma require notaries in all cases to add to their official signature the date of the expiration of their commissions;⁸ and, except

3. The impress of the seal upon paper without wax is sufficient. *Myers v. Russell*, 52 Mo. 26.

4. The impress of the seal upon wax, attached to the instrument, is sufficient. *Stooksberry v. Sloan*, (Tex.), 21 S. W. 694.

5. *McKeller v. Peck*, 39 Tex. 381.

6. *Brown v. Gilpin*, 120 Mo. App. 130.

7. When the notary's seal is attached or imprinted on the instrument, it is not necessary that the jurat state that it is given under seal. *City etc. v. Railway*, 77 Mo. 180; *Dale v. Wright*, 57 Mo. 110. When the instrument does not show the impress of the seal, or if it is so dim that it cannot be determined whether it was a proper seal, and the jurat does not state that it was given under official seal, it is insufficient. *Stookesberry v. Swan*, (Tex.), 21 S. W. 694.

8. No acknowledgment or other act of a notary shall be held invalid by reason of the failure of such notary to designate in his jurat the date of the expiration of his commission. (Kirby's Dig. Ark. sec. 5746.)

The failure of the notary to certify the expiration of his term of office or to his place of residence does not affect the validity of an acknowledgment. *Kansas City & N. E. Ry. Co. v. Kansas City & N. W. Ry. Co.*, 129 Mo. 62, 31 S. W. 451.

Missouri, make his failure to do so a misdemeanor. The penalty for such neglect is, in Arkansas, a fine not to exceed five dollars; in Kansas, a fine not to exceed one hundred dollars; and in Oklahoma a fine not to exceed fifty dollars. (Kirby's Dig. Ark., sec. 5747; G. S. Kan., sec. 5457; R. L. Okla., sec. 4244.)

Sec. 23.—Notarial records in Arkansas.—

In ARKANSAS.—“Each notary shall keep a fair record of all his official acts in a book to be kept by him for that purpose, and, when required, shall give a certified copy of any record in his office to any person applying therefor, on the payment of fees thereon.”

“If any notary die, resign or remove from the county, or be removed from office, his record book and all his public papers shall be delivered to the county clerk to be delivered to his successor.” ⁹

Sec. 24.—In Kansas.—

“In case of protest for banks or banking corporations, notaries shall keep a register thereof in a book provided for that purpose by the bank or banking corporation; and the notary shall not be required to deliver such register to his successor in office, but shall leave the same in the possession of such bank or banking corporation.”

“Every notary shall keep a fair record of his official acts, and, if required, shall give a certified copy of any record in his office, upon the payment of the fee therefor.”

“If any notary die, resign, be disqualified or remove from the county, his record, and official and public papers of his office, shall, within thirty days, be delivered to the clerk of the district court of the county, to be delivered to his successor when qualified.” ¹⁰

9. Kirby's Dig. Secs. 5749-50.

10. G. S. Kan. secs. 5460-61.

Sec. 25.—In Missouri.—

“Every notary shall keep a true and perfect record of his official acts, except those connected with judicial proceedings, and those for whose public record the law provides, and, if required, shall give a certified copy of any record in his office, upon the payment of the fees therefor. Every notary shall make and keep an exact minute in a book kept by him for that purpose of each of his official acts, except as herein above provided.”

All state officers “shall, at the expense of their respective counties, procure a book in which a correct account of all fees collected by such officer, giving date, in what case, and name of person entitled thereto, shall be entered.”¹¹

Sec. 26.—In Oklahoma.—

Every notary shall keep a fair record of his official acts, and, if required, shall give a certified copy of any record in his office, upon the payment of the fees therefor.¹²

Sec. 27.—In Texas.—

“Every notary public shall procure and keep a well-bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgment, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced, and if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee thereof shall be kept, and the county wherein the land is situated. The book herein required to

11. R. S. Mo. secs. 10179.

12. R. L. Okla. sec. 4247.

be kept, and the statements herein required to be entered, shall be an original public record, and the same shall be open to inspection by any citizen at all reasonable times; and such notary public shall give a certified copy of any record in his office to any person applying therefor, on payment of all fees thereon."

Where a notice of protest is served by a notary, "he shall note in his protest and notarial record on whom and when such notice was served; and when such notice shall be deposited in the postoffice by him, he shall specify when and where mailed, and to whom and where directed, and such protest or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in all courts of the state as evidence of the facts therein set forth."

"Whenever a notary public shall remove permanently from the county for which he was appointed, or an *ex officio* notary from his precinct, his office shall thereupon be deemed vacant.

"Whenever any notary public shall vacate his office in any manner, his records, books and all public papers in his office shall be deposited with the clerk of the county court of his county." ¹³

Sec. 28.—Notarial Acts as Evidence.—

All acts of a notary as such must be authenticated by his accompanying certificate. Such certificate when executed in proper form is evidence of the facts therein stated; provided the acts certified to come within the duty of the notary and are such as he may properly certify to.¹⁴ The certifi-

13. R. S. Tex. arts. 591, 6005, 6009, 6011.

14. The certificate of a notary public is evidence of the facts therein stated. 1 Greenleaf on Evid. sec. 5; Hutchens v. Manington, 6 Ves. (Eng.) 825; Browne v. Philadelphia Bank, 6 S. & R. (Pa.) 484; Townsley v. Sumrall, 2 Pet. (U. S.) 178; Porter v. Judson, 1 Gray (Mass.) 175; Wright v. Barnum, 1 Esp. (Eng.) 700; Lloyd v. McGarr, 3 Pa. 474; Schorr v. Woodlief, 23 La. 473.

A duly certified copy of the record of a notary in another state is admissible to prove a sale of land. Waters v. McGraw, 16 Tex. 506;

cate is not evidence of extraneous matters or facts which he is not required to authenticate,¹⁵ but the court will presume that the notary performed such minor acts as are necessary to give effect to his certificate.¹⁶

Sec. 29.—Admissibility how affected.—

The admissibility of such acts as evidence is not affected by the fact that the notary has no recollection of them,¹⁷ and after the notary's death his records and memoranda regularly kept are admissible in evidence to prove the facts therein stated.¹⁸ There is some conflict of authority as to whether

Williams v. Conger, 49 Tex. 582. A notary's certificate of protest is admissible and is sufficient proof of the facts therein recited. *Munzeshimer v. Allen*, 3 App. C. C. Tex. sec. 55.

RECORDS:—Original acts kept by a notary in a volume for the year and signed by him at the end, is a sufficient signing and they are admissible without proof of their execution. *Andrews v. Marshall*, 26 Tex. 212.

15. EVIDENCE ONLY OF SUCH FACTS AS IT IS THE NOTARY'S DUTY TO CERTIFY:—When a notary in protesting a note certifies that he notified the endorser by addressing notices to them at a certain place, naming the place, it must be proved by other evidence that the parties resided at the place mentioned. *Turner v. Rogers*, 8 Ind. 139.

A notary stated in his certificate of protest that notice was given to the agent of the endorser; *held*, that the agency must be proven by evidence *aliunde* before the certificate can be received as evidence of notice. *Drum v. Bradfute*, 18 La. 680; *O'Connell v. Walker*, 1 Port. (Ala.) 267; *Turner v. Rogers*, 8 Ind. 139; *Bradshaw v. Hedges*, 10 Iowa 402; *Bell v. Lent*, 24 Wend. (N. Y.) 230.

16. When a notary's certificate shows that he has mailed notice, a prepayment of postage and performance of other minor details as required by postoffice regulations will be presumed. *Brooks v. Day*, 11 Iowa, 46; *Rogers v. Jackson*, 19 Wend. (N. Y.) 383.

17. RECOLLECTION OF NOTARY:—The admissibility of the record of notarial acts is not affected by the fact that he has no recollection of such acts. *Sherer v. Easton Bank*, 33 Pa. 134; *Span v. Baltzell*, 1 Fla. 301; 46 Am. Dec. 346.

18. AFTER DEATH OF NOTARY:—The written memoranda of a deceased notary stating the time and manner of demand and notice

protest and notice can be substantiated by proving that a notary public made a certificate of protest which has been lost.¹⁹

Sec. 30.—Effect of such evidence.—

A notary or his sureties can not be allowed to vary or deny the statements in the notary's record or certificate.²⁰ Such record or certificate is conclusive against them. As affecting other parties they are only *prima facie* and may be varied or contradicted by other evidence.²¹ The notary

of protest are admissible in evidence to prove such facts. *Bodley v. Scarborough*, 5 How. (Miss.) 729; *Barnard v. Planters Bank*, 4 How. (Miss.) 98; *Bank v. Cooper*, 1 Haw. (Del.) 10. See, also, 1 *Greenleaf on Evid.*, sec. 115; *Austin v. Willson*, 24 Vt. 630; *Holms v. Smith*, (Me.) 33; *Am. Dec.* 650; *Butler v. Wright*, 2 Wend. (N. Y.) 369; *Welsh v. Barrett*, 15 Mass. 380.

Memoranda in the margin of a notary's record opposite the entry of the protest of a note "The endorser duly notified in writing," was held admissible, the notary being dead, and it being shown that it was his custom to make such memoranda on his record. *Bell v. Perkins*, 7 Tenn. 261, 14 *Am. Dec.* 745. When a notary is dead a sworn copy of his record of protest is admissible to prove notice. *Halliday v. McDougal*, 20 Wend. (N. Y.) 81.

19. Notice can not be substantiated by proving that a certificate of protest was made and subsequently lost or destroyed. *Dutchess County Bank v. Ibbotson*, 5 Den. (N. Y.) 110. A duplicate certificate of the protest of a bill, when the original has been lost or destroyed, may be admitted in evidence. *Usher v. Gaither*, 2 Har. & M. (Md.) 457; *Chace v. Taylor*, 4 Har. & J. (Md.) 54. See, also, "Lost Papers;" *Am. and Eng. Encyc.*

20. The certificate of a notary is conclusive as to himself and his sureties. *McKeller v. Peck*, 39 Tex. 381; *Peet v. Dougherty*, 7 Rob. (La.) 85; *Schmidt v. Drouet* (La.), 8 So. 396; *Wright v. Bundy*, 11 Ind. 398; *Stone v. Montgomery*, 35 Miss. 83; *Nicholson v. Snyder*, 97 Md. 415, 55 Att. 484.

21. As against others such certificate is only *prima facie* evidence. *Rives v. Parmley*, 18 Ala. 256; *Union Bank v. Middlebrook*, 33 Conn. 95; *McFarland v. Pico*, 8 Cal. 626; *Suthers v. Rogers*, 10 Iowa, 231; *McKnight v. Lewis*, 5 Barb. (N. Y.) 540; *Am. and Eng. Encyc. L.*, vol. 16, p. 779.

who made the certificate may, in actions between other parties, be used as a witness to explain or even to contradict his certificate or record.²²

Sec. 31.—Powers, jurisdiction and duties under the Statutes.—

The statutes of Arkansas, Kansas, Missouri, Oklahoma and Texas provide that notaries public shall have power to administer oaths and give certificates thereof under their hands and official seals. In Arkansas a notary may administer an oath anywhere in the state; to take proof of acknowledgments of all instruments of writing relating to commerce and navigation; and to all instruments of writing purporting to convey or encumber or in any manner affect any estate, real or personal, when such acknowledgment or proof is required to admit such instrument to record, and to certify under their hands and seals the truth of acts done by virtue of their office. They also have power to take depositions and attach the oath of any person to a petition or answer in any suit pending in the courts of said states. In Arkansas the jurisdiction of the notary in taking depositions is coextensive with the limits of the state. Castle's Sup. sec. 5745; Kirby's Dig. Ark. sec. 5744; G. S. Kan. sec. 5459; R. S. Mo. sec. 10178; R. L. Okla. sec. 4243; Sayles' Civ. Stats. art. 3511.

Sec. 32.—Power to administer oaths recognized by the United States, etc.—

Notaries public in any of the five states named may administer oaths and take affidavits to be used in the United States courts and before the heads of departments of the federal government. The courts of all the states now recog-

22. A notary is a competent witness to explain or even to contradict his certificate. *Craig v. Shallock*, 10 Serg & R. (Pa.) 377; *Stewart v. Allison*, 6 Serg. & R. (Pa.) 324, 9 Am. Dec. 433; *Adams v. Wright*, 14 Wis. 408.

nize practically all of the above enumerated powers of notaries. Courts generally presume, in the absence of proof to the contrary, that notaries of other states have the same powers granted them by statute as notaries of their own State,²³ but the courts of some states do not hold to this presumption.²⁴

Sec. 33.—Extent of other powers.—

Notaries in the five states before named may take acknowledgments of instruments of writing, conveying, encumbering or affecting in any way, property situated in any of the states, and such acknowledgments, when the official character of the notary is properly authenticated, are recognized by most foreign countries. They may take depositions, either under commission or notice, to be used in the courts of any of the states or in the United States courts, except when the commission is issued to a special person or persons therein named; then only the persons named in the commission are authorized to act. In case a notary is named he should sign all certificates as commissioner and not in his official character, for in taking such deposition he is not acting as a notary public, but as a special commissioner or officer of the court from which the commission issued.

Their power to protest foreign bills of exchange is an incident to the office and recognized in all the civilized countries. By statute in all the states they are authorized to protest inland bills and promissory notes. See ACKNOWLEDGMENTS; DEPOSITIONS; PROTEST.

23. PRESUMPTION AS TO POWERS:—In the absence of proof to the contrary, the court will presume that the notaries of other states have the same power that is granted by statute to the notaries of its own state. *Silver v. Kansas City R. R. Co.*, 21 Mo. App. 5; *Conoly v. Riley*, 25 Md. 402; *Pinkham v. Cockell*, 77 Mich. 265. See, also, *Keefer v. Mason*, 36 Ill. 408.

24. *Chandler v. Hanna*, 73 Ala. 390; *Trevor v. Colgate*, 181 Ill. 129, 54 N. E. 909.

CHAPTER III.

ACKNOWLEDGMENTS. GENERAL PROVISIONS.

Sec.	Sec.
34. Definition and object.	41. Separate examination of wife.
35. Nature of the act.	42. Time of making acknowledgments.
36. Origin and necessity.	43. Certificate, requisites and time of making.
37. Who may make acknowledgments.	44. Amendment of certificate.
38. Agent and attorney.	45. Defects cured by statute.
39. Partnerships and corporations.	46. Liability of officer for false certificate.
40. Husband and wife.	

Sec. 34.—Definition and object.—

An acknowledgment is the act of one, who has executed a written instrument, in going before a competent officer or court and declaring such instrument to be his act and deed.¹ The word is also applied to the certificate of the officer that such declaration was made.²

The objects of an acknowledgment are to entitle a deed to be recorded, and to make it competent evidence without further proof of its execution.³

Sec. 35.—Nature of the act.—

The authorities are conflicting as to whether the act of taking an acknowledgment is a ministerial or judicial act.

1. Anderson's Law Dict.; Bouvier's Law Dict.; Strong v. U. S. 34 Fed. Rep. 17; Doe v. Smith, 3 McLean (U. S.) 362; Fogarty v. Finlay, 10 Cal. 239.

2. The acknowledgment of a deed includes both the act of acknowledging and the written evidence thereof made by the officer. Rogers v. Pell, 154 N. Y. 518, 49 N. E. 75.

3. Criscoe v. Hambrick, 47 Ark. 235, 1 S. W. 150; Gray v. Ulrich, 8 Kan. 112; Black v. Graig, 58 Mo. 565.

This point has arisen in considering the question of territorial jurisdiction of the officer, his disqualification by reason of interest in the conveyance or relation to some of the parties thereto, his power to amend a defective certificate of acknowledgment, the effect of the certificate as evidence, and the liability of the officer to persons injured by reason of a defective acknowledgment. The courts of some of the states hold the act to be ministerial, while the courts of other states hold it to be a judicial act.⁴ There is also a distinction between the acknowledgments of married women and those of other persons, some of the courts holding the taking of the acknowledgment of a married woman to be a judicial act, and of other persons to be a ministerial act.⁵ The

4. ACT MINISTERIAL:—Taking the voluntary acknowledgment of a person to a deed is purely a ministerial and not a judicial act nor in any way connected with a judicial proceeding. It may be taken out of the commonwealth by a notary public who is in no sense a judicial officer. *Bisco v. Byrd*, 15 Ark. 655; *Wardlaw v. Meyer*, 77 Ga. 620; *People v. Bartels*, 138 Ill. 322, 27 N. E. 1091; *Stevenson v. Brasher*, 90 Ky. 23, 13 S. W. 242; *Horboch v. Tyrrell*, 48 Nebr. 514, 67 N. W. 485, 37 L. R. A. 434.

It involves no compulsion or summons of any person who does not appear of his own accord, and rarely, if ever, requires any investigation of the circumstances under which the deed is executed. In case the grantor refuses to acknowledge, the officer can not coerce him or inquire into his reasons for refusing, or receive any testimony of the execution, except from a subscribing witness. *Learned v. Riley*, 14 Allen (Mass.) 109.

ACT JUDICIAL:—The taking of an acknowledgment is a judicial act and a notary is not liable for mistakes if he acts in good faith. *Wills v. Wood*, 28 Kan. 400; *Com v. Haines*, 97 Pa. St. 228, 39 Am. Rep. 805; *Henderson v. Smith*, 26 W. Va. 829, 53 Am. Rep. 139

5. The doctrine that the taking of an acknowledgment is a judicial act had its origin in the consideration of acknowledgments by married women, where the officer is required to make the privy examination herein referred to, and as applied to such cases the doctrine is sound; but an ordinary acknowledgment can not be regarded as a judicial act. Those cases holding that it is a judicial act will be found, upon examination, to have improperly applied the doctrine in regard

weight of authority seems to be that the act is ministerial, except the taking of the acknowledgment of married women, which is held to be a judicial or *quasi* judicial act. It takes the place of alienation by "fine" in a court of record under the law of England.⁶

It was enacted in England (Statute 18 Edward I, 1290) that if a feme covert should be a party to a fine, she should be examined by certain justices, and if she dissented, the fine was not to be levied. The officer taking an acknowledgment of a married woman performs the function of a justice and must exercise judgment and discretion in ascertaining whether or not she freely and willingly executes the instrument, and a deed executed by a married woman does not convey or pass title until it is acknowledged; but when properly acknowledged by her and certified to by a competent officer it has all the force and effect of a judgment of a court of record, and can not be attacked except for fraud or duress.

Sec. 36.—Origin and necessity of acknowledgments.—

The practice of acknowledging written instruments arose from a desire to prevent fraud and litigation in establishing

to acknowledgments by married women where a privy examination is necessary. *People v. Bartels*, 138 Ill. 322, 27 N. E. 1091.

6. ACT JUDICIAL IN CASE OF MARRIED WOMEN:—

The object of the statutes requiring the separate examination of the wife to be taken by an officer, to be certified to by him in a particular form, and to be recorded in a public registry, is not only to protect her by making it the duty of such officer to ascertain and to certify that she has not executed the deed by compulsion, or in ignorance of its contents, but also to facilitate the conveyance of estates by married women and to secure and perpetuate evidence upon which transferers may rely. The duty of the officer involves the exercise of judgment and discretion, and is a judicial or *quasi* judicial act. Except in cases of fraud his certificate, made and recorded, as the statute requires, is conclusive evidence of the separate examination and acknowledgment, and extrinsic evidence of the manner in which the examination was conducted is inadmissible unless fraud is alleged. *Calumet Canal Co. v. Russell*, 68 Ill. 426; *Kerr v. Russell*, 69 Ill. 666, 18 Am. Rep. 634; *Johnson v. Taylor*, 60 Tex. 360; *Hitz v. Jenks*, 123 U. S. 301, 31 L. Ed. 158.

title to real property, by furnishing and perpetuating proof of the execution of conveyances and instruments in regard thereto. It was unknown to the common law, but is now provided for and required by the statutes of all the states, and of most foreign countries. The acknowledgment is not a part of the deed itself, but is required by statute as evidence of its execution, and is necessary for the admission of the instrument to record.⁷ As between the parties, their privies and persons having actual notice, it is not essential to the validity of the deed, except in conveyances executed by married women in the states where a privy examination is required, in which case the acknowledgment is absolutely essential to the validity of the instrument, and the certificate of the officer must comply with all the requirements of the statute or no title passes.⁸ The record of an unacknowledged deed, or a deed without proper acknowledgment, is not notice to third persons of the rights it confers, and is, therefore, not good as against creditors or subsequent purchasers for a valuable consideration without notice.

7. *Crisco v. Hambrick*, 47 Ark. 235, 1 S. W. 150; *Gray v. Ulrich*, 8 Kan. 112; *Black v. Graig*, 58 Mo. 565.

8. An unacknowledged deed is good between the parties and purchasers, with actual notice. *Gray v. Ulrich*, 8 Kan. 112; *Munger v. Baldrige*, 41 Kan. 236, 21 P. 159, 13 A. S. R. 273; *Taylor v. Harrison*, 47 Tex. 454; *Clapp v. Engledow*, 82 Tex. 290; *Doe v. Smith*, 3 McLean (U. S.) 362; *New Hampshire Land Co. v. Tilton*, 19 Fed. Rep. 73.

In *Sicard v. Davis*, 6 Pet. (U. S.) 124, 31 L. Ed. 342, Chief Justice Marshall said: "The acknowledgment or the proof which may authorize the admission of the deed to record, and the recording thereof, are the provisions which the law makes for the security of creditors and purchasers. They are essential to the validity of the deed as to persons of that description, not as to the grantor. His estate passes out of him and vests in the grantee so far as respects himself as entirely, if the deed be in writing sealed and delivered, as if it be also acknowledged or attested and proved by three subscribing witnesses and recorded in the proper county.

A proper acknowledgment is essential to the validity of a conveyance by a married woman, when the statute requires that she acknowl-

Sec. 37.—Who may make acknowledgments.—

The person who executes a written instrument is the proper one to acknowledge its execution, and a deed executed by two or more grantors must be acknowledged by each of them in order to be binding on all.⁹ A deed duly acknowledged by some of the grantors and defectively acknowledged by others will be binding as to those whose acknowledgments were legal unless otherwise expressed in the deed.¹⁰

edge separate and apart from her husband. *Worsham v. Freeman*, 34 Ark. 55; *Wood v. Terry*, 33 Ark. 385; *Tatum v. St. Louis*, 125 Mo. 647, 28 S. W. 1002; *Baker v. Chancellor*, 73 Tex. 475, 11 S. W. 503; *Stephens v. Shaw*, 68 Tex. 261, 4 S. W. 458.

A married woman up to the last moment, and even when about to acknowledge the instrument has a right under the statute to retract and repudiate it. This statute even when strictly construed affords a flimsy protection to the property of the wife. *Callahan v. Patterson*, 4 Tex. 61.

At common law a married woman could only convey title to her real estate by fine and common recovery, and a deed made by her under the statute is void unless the law is substantially complied with. *Berry v. Donley*, 26 Tex. 737.

When the acknowledgment has in fact been made in accordance with the law, and the certificate only is defective a court of equity may correct the certificate. *Johnson v. Taylor*, 60 Tex. 360, but an incomplete acknowledgment cannot be completed by merely filling out a proper certificate after the acknowledgment has been taken. The certificate must be true in every substantial requisite. *Ayers v. Probasco*, 14 Kan. 175; *Cole v. Bammel*, 62 Tex. 108.

9. *Hall v. Redson*, 10 Mich. 21.

10. *Myer v. Campbell*, 12 Mo. 603; *Fleschner v. Sumpter*, 12 Ore. 161, 6 P. 506.

The grantor named in a deed, by acknowledging the deed, ratifies the signature of his name to the deed, though it was signed by some other person without authority. *McClendon v. Equitable, Mtg. Co.*, 122 Ala. 384, 25 So. 30; *Chivington v. Colorado Springs Co.*, 9 Colo. 597, 14 P. 212; *N. W. Loan Co. v. Jonasen*, 11 S. D. 566, 79 N. W. 840. Unless the statute requires signature the acknowledgment by the grantor named in the instrument is sufficient. *Newton v. Emerson*, 66 Tex. 142.

Sec. 38.—Agent or attorney.—

An agent or attorney in fact may acknowledge a deed or other instrument that he is authorized by his principal to execute, but the certificate of acknowledgment must show the capacity in which he acts, and a deed executed by several attorneys in fact must be acknowledged by all of them.¹¹ In Texas the husband cannot act as attorney in fact for the wife, and in that way convey her property.¹²

Sec. 39.—Partnerships and corporations.—

A deed or other instrument executed by one member of a firm conveying or charging partnership property should be acknowledged by the member executing it, but it must be acknowledged by him as the act of the firm and not as his individual act. An acknowledgment purporting to have been made by a firm without showing by which member of the firm, is void. Where all the members of a firm join in a deed they must each acknowledge for himself.¹³

In most of the states deeds and conveyances of real estate made by a corporation must be acknowledged by the president or presiding member, or trustee of such corporation to be the act of the corporation.¹⁴

11. A deed executed by three attorneys in fact must be acknowledged by all of them, as the act of their principal. *Peters v. Condren*, 2 Serg. & R. (Pa.) 80.

A power of attorney to convey lands should be proved or acknowledged and recorded in the same manner as the conveyance itself. *McDaniel v. Grace*, 15 Ark. 465; *Citizens Fire Ins. Co. v. Doll*, 6 Am. Rep. 360; *Warren v. Jones*, 69 Tex. 462.

12. A married woman can not convey her property by her husband as attorney in fact unless she join in the deed and acknowledge it upon separate examination. *Mexia v. Oliver*, 148 U. S. 664; *Cameron v. Boutwell*, 53 Tex. 626; *Peak v. Brinson*, 71 Tex. 31.

13. *McCollough Co. Land Co. v. Whitefort*, 21 Tex. Civ. App. 315, 50 S. W. 1042; *Muller v. Boone*, 63 Tex. 91.

14. *Bennett v. Knowls*, 66 Minn. 4, 68 N. W. 111; *Hopper v. Lovejoy*, 47 N. J. Eq. 573, 21 Atl. 298, 12 L. R. A. 588, 24 A. S. R. 419.

Sec. 40.—Husband and wife.—

A deed conveying the wife's lands or the homestead must be acknowledged by both husband and wife or it will be void as to her.¹⁵ The husband can not bind the wife by acknowledging a deed executed by both, though as a general rule such a deed is valid as to him.¹⁶ If a married woman, after executing a deed, refuses to acknowledge it, she can not be compelled by a court of equity to do so, though if the purchase money or any part thereof has been paid, she can not hold the land unless she pay back the money she has received.¹⁷ And it seems that when a married woman has executed and properly acknowledged a deed, but the officer taking the acknowledgment has defectively certified thereto, a court of equity will amend and supply the defects in the certificate.¹⁸

Sec. 41.—Separate examination of wife.—

In Arkansas and Texas and some other states it is provided by statute that the acknowledgment of a married woman shall be taken only upon her examination separate and apart from her husband;¹⁹ The separate examination of the wife was designed to protect her from the undue influence or coercion of her husband,²⁰ and while the statutory re-

15. *McGeehe v. McKinzie*, 43 Ark. 156; *Connor v. Abbott*, 35 Ark. 465; *Bagby v. Emberson*, 79 Mo. 139; *Hoskinson v. Adkins*, 77 Mo. 537; *Harris v. Wells*, 85 Tex. 312, 20 S. W. 68; *Hayden v. Moffett*, 74 Tex. 647, 12 S. W. 820, 15 A. S. R. 866; *Stone v. Sledge* (Tex. Civ. App.), 24 S. W. 697.

16. *Shryock v. Cannon*, 39 Ark. 434; *Wilson v. Albert*, 89 Mo. 537, 1 S. W. 209.

17. *Callahan v. Patterson*, 4 Tex. 61, 51 Am. Dec. 712; *Farmer v. Daniel*, 82 N. C. 152.

18. *Johnson v. Taylor*, 60 Tex. 360.

19. *Kirby's Dig. Ark. sec. 751*, R. S. Tex. art. 6802.

20. *Donehoe v. Mills*, 41 Ark. 421; *McGeehe v. McKinzie*, 43 Ark. 156; *Hollis v. Frankois*, 5 Tex. 196; *Mullins v. Weaver*, 57 Tex. 5; *Angier v. Coward*, 79 Tex. 551, 15 S. W. 698; *Hitz v. Jenks*, 123 U. S. 297, 31 L. Ed. 156; *Sewell v. Haymaker*, 127 U. S. 719; 32 L. Ed. 299.

quirements are not the same in all the states, the general provisions are that the wife must be examined privily and apart from her husband;²¹ the contents and legal effect of the deed or instrument must be fully explained to her,²² and in Texas and some other states, the explanation must be made to her by the officer during her separate examination.²³ When it becomes necessary to explain the contents of the instrument through an interpreter, the interpreter should be sworn.²⁴ It must appear that she has executed the instrument voluntarily, without fear or compulsion, and that she does not wish to retract it.²⁵

The right or authority of a married woman to convey her real estate or contract with reference thereto or to relinquish her dower was unknown to the common law. Such right or authority being derived from the statutes of the different states, the manner of taking and certifying acknowledgments, prescribed by such statutes, must be followed in all substantial particulars.

Sec. 42.—Time of making acknowledgment.—

In the absence of a statute designating the period within which acknowledgments shall be made, a deed or other instru-

21. The wife must be examined, separate and apart from her husband, and the certificate must show that fact. *Stilwell v. Adams*, 29 Ark. 346; *Rice v. Peacock*, 37 Tex. 392; *Loony v. Adamson*, 48 Tex. 619; *Jones v. Robbins*, 74 Tex. 615, 12 S. W. 824; *Williams v. Ellingsworth*, 75 Tex. 480, 12 S. W. 746; *Beck v. Soward*, 76 Cal. 547; *Garrett v. Moss*, 22 Ill. 363; *Elwood v. Klock*, 13 Barb. (N. Y.) 50.

22. *Johnson v. Bryan*, 62 Tex. 623; *Stone v. Sledge* (Tex.), 24 S. W. Rep. 697; *Runge v. Sabin* (Tex.), 30 S. W. Rep. 568.

23. *Johnson v. Taylor*, 60 Tex. 369; *Norton v. Davis*, 83 Tex. 36, 18 S. W. 430; *Bollinger v. Manning*, 79 Cal. 7, 21 P. 375.

24. *Waltee v. Weaver*, 57 Tex. 569; *Herring v. White*, 6 Civ. App. 249; *DeAmaz v. Escandon*, 59 Cal. 486; *Spurgin v. Traub*, 65 Ill. 170.

25. *Chanvin v. Wagner*, 18 Mo. 531; *Williams v. Ellingsworth*, 75 Tex. 480, 12 S. W. 746; *Davis v. Agnew*, 67 Tex. 206, 2 S. W. 43; *Freeman v. Preston* (Tex. Civ. App.), 29 S. W. 495.

ment may be acknowledged at any time after its execution,²⁶ and when a deed is executed by two grantors, it is not necessary that they both acknowledge at the same time.²⁷ An acknowledgment may be taken on a legal holiday.

Sec. 43.—The certificate, time of making and requirements.

It has been held that a certificate of acknowledgment may be made long after the acknowledgment has been taken, but the better practice is to make the certificate immediately after taking the acknowledgment.²⁸ The laws of the different states differ as to the statements that should be made in the certificate, but the certificate should show that in taking the acknowledgment every thing had been done that the law requires.²⁹ The certificate should be written on the deed itself, though it has been held that a certificate written on a separate sheet and pasted to the deed is sufficient.³⁰

While the courts generally require only a substantial compliance with the statutes, it is better to follow strictly

26. *Hood v. Powell*, 73 Ala. 171; *Fisher v. Butcher*, 19 Ohio, 406, 53 Am. Dec. 436.

27. The acknowledgment of the husband taken on one day and that of the wife on the next day is sufficient. *Halbert v. Hendrix*, (Tex. Civ. App.), 26 S. W. Rep. 911; *Watson v. Peters*, 26 Mich. 508; *Williams v. Robson*, 6 Ohio St. 510. An instrument may be acknowledged when offered in evidence. *Pitkin v. Leavitt*, 13 Vt. 379; *Sheldon v. Stryher*, 42 Barb. (N. Y.) 284.

May be taken on a legal holiday. *Green v. Godfrey*, 44 Me. 25; *Tracy v. Jenks*, 15 Pick. (Mass.) 465; *Slater v. Shock*, 41 Minn. 269, 43 N. W. 7; *Lucas v. Larkin*, 85 Tenn. 355, 3 S. W. 647.

28. *Hutchinson v. Kelley*, 10 Ark. 178; *Grant v. Oliver*, 91 Cal. 158; 27 P. 861; *Hannon v. McGee*, 57 Miss. 410.

29. *Moses v. Dibrell*, 2 Civ. App. Tex. 457; *Dom v. Best*, 15 Tex. 62; *Smith v. Elliott*, 39 Tex. 201; *Little v. Weatherford*, 63 Tex. 638.

30. *Schramm v. Gentry*, 63 Tex. 583; *Winkler v. Higgins*, 9 Ohio, 599. So is a certificate written in the body of the deed instead of at the foot. *Brownson v. Scanlan*, 59 Tex. 222; *Snowden v. Rush*, 69 Tex. 593.

the statutory form and all material facts in regard to the acknowledgment must be shown in the certificate.³¹ The courts are more strict in regard to the acknowledgment of married women in those states requiring the separate acknowledgment of the wife, than they are in regard to the acknowledgment of men and single women; and the certificate of the acknowledgment of a married woman should show that every thing was done that the statute requires should be done.³² The certificate must show the official character of the officer,³³ the county and state in which he is acting,³⁴ that the grantor was known or proven to him,³⁵

31. *Jackoway v. Gault*, 20 Ark. 190, 73 Am. Dec. 494; *Salmon v. Huff*, 80 Tex. 133, 15 S. W. 1047; *Wickersham v. Reeves*, 1 Iowa, 413; *Co-operative Saving Ass'n v. Green*, (Idaho), 51 P. 770; *Holt v. Metropolitan Trust Co.*, 11 S. D. 456, 78 N. W. 947.

32. *McGeehe v. McKinzie*, 43 Ark. 156; *Stillwell v. Adams*, 29 Ark. 346; *Bagby v. Emberson*, 79 Mo. 139; *Hoskinson v. Atkins*, 77 Mo. 537; *Coffee v. Hendrix*, 66 Tex. 676; *Smith v. Elliott*, 39 Tex. 201; *Berry v. Donley*, 26 Tex. 737.

33. *Whitehead v. Foley*, 28 Tex. 268; *Coffee v. Hendrix*, 66 Tex. 676, 2 S. W. 47; *Gulf etc. R. Co. v. Carter*, 5 Tex. Civ. App. 675, 24 S. W. 1083; *Emeric v. Alverado*, 90 Cal. 444, 27 P. 356; *Summer v. Mitchell*, 29 Fla. 179, 10 So. 562, 14 L. R. A. 815; 30 A. S. R. 106; *Booth v. Cook*, 20 Ill. 129; *Johnson v. Haines*, 2 Ohio, 55.

34. *Vance v. Schuyler*, 6 Ill. 160; *Patton v. Brown*, Cook (Tenn.) 126.

A certificate of an acknowledgment, taken out of the state, that names the county in which it was taken but not the state, is insufficient. *Hardin v. Kirk*, 49 Ill. 153, 95 Am. Dec. 579; *Hardin v. Osborn*, 60 Ill. 93. In Missouri, it has been held that a certificate of an acknowledgment taken within the state, naming the county, but not the state, in which it was taken, is sufficient. *Rabidoux v. Cassilegi*, 10 Mo. App. 516. When the signature of the officer shows him to be an officer of the county for which he was appointed it will be sufficient, though the caption shows or names another county. *Alaxander v. Houghton*, 86 Tex. 702, 26 S. W. 937.

35. *Calloway v. Fash*, 50 Mo. 420; *McKie v. Anderson*, 78 Tex. 207, 14 S. W. 576; *Salmon v. Huff*, 80 Tex. 133; 15 S. W. 1047; *Frost v. Erath Cattle Co.*, 81 Tex. 505, 17 S. W. 52, 26 A. S. R. 831; *Fogarty*

and if not known by whom proven,³⁶ and that he acknowledged the instrument to be his act and deed;³⁷ and in case of a married woman's acknowledgment, the certificate must show that she was separately examined,³⁸ that the contents and legal effect of the instrument were explained to her,³⁹ that she voluntarily signed the instrument and that she wished not to retract it.⁴⁰ In case an interpreter is used to explain the instrument, the certificate should show that

v. Findlay, 10 Cal. 239, 70 Am. Dec. 714; *McMinn v. Oconnor*, 27 Cal. 238.

A certificate that omits the word "known" is fatally defective. *Wolf v. Fogarty*, 6 Cal. 224, 65 Am. Dec. 509; *Tully v. Davis*, 30 Ill. 103, 83 Am. Dec. 179.

36. *Kimball v. Semple*, 25 Cal. 440; *Ritter v. Worth*, 58 N. Y. 627.

37. *Stamphill v. Bullen*, 121 Ala. 250, 25 So. 928; *Keeling v. Hoyt*, 31 Neb. 453, 48 N. W. 66; *Becker v. Anderson*, 11 Neb. 493, 9 N. W. 640; *Johnson v. Irwin*, 16 Wash. 652, 48 P. 345.

38. *Stillwell v. Adams*, 29 Ark. 346; *Russell v. Umphelt*, 27 Ark. 339; *Krieger v. Croker*, 118 Mo. 531, 24 S. W. 170; *Rogers v. Woody*, 23 Mo. 548; *Breitling v. Chester*, 88 Tex. 586, 32 S. W. 527; *Williams v. Ellingsworth*, 75 Tex. 480, 12 S. W. 746; *Hayden v. Moffatt*, 74 Tex. 647, 12 S. W. 820, 15 A. S. R. 866; *Parker v. Chancellor*, 73 Tex. 475, 11 S. W. 503.

39. *Burnett v. McCluey*, 78 Mo. 676; *Williams v. Ellingsworth*, 75 Tex. 480, 12 S. W. 746; *Hayden v. Moffatt*, 74 Tex. 647, 12 S. W. 820, 15 A. S. R. 866; *Johnson v. Bryan*, 62 Tex. 623; *Ruleman v. Pritchett*, 56 Tex. 482; *Hutchison v. Anisworth*, 63 Cal. 286. A recital that the wife was, "Made acquainted with the contents of said deed," is sufficient. *Hughs v. Lane*, 11 Ill. 123, 50 Am. Dec. 436. So is a recital that the contents, "were fully made known to her." *Lane v. Dolicke*, 6 McLean, (U. S.), 200.

Parol evidence is not admissible to show that the wife knew the contents of the instrument, when the certificate fails to state that it was explained to her by the officer. *Norton v. Davis*, 83 Tex. 32, 18 S. W. 430; *Barnett v. Barnett*, 15 Serg. & R. (Pa.) 72, 16 Am. Dec. 516.

40. *Sayler v. Romanet*, 52 Tex. 567; *Smith v. Elliott*, 39 Tex. 208. It is not necessary that the certificate contain the very words of the statute. It is sufficient if it shows that it was the wife's present purpose to make the conveyance. *Adens v. Pardue*, (Tex.) 36 S. W. 1015.

fact, and also show that he was duly sworn,⁴¹ and where a grantor, *femme* covert, is deaf and dumb the certificate should show that fact and should show in what way the nature of the transaction and contents of the instrument were explained to her.⁴² The certificate must be dated and signed by the officer, and in each of the five states for which this book was specially written, and most of the other states it must bear impress of the official seal of the officer.⁴³ It is immaterial upon what part of the certificate the seal is impressed, but the impress is usually made at the left, opposite the signature of the officer.

Sec. 44.—Amendment of certificate.—

It is generally held that during his term of office, and before the recording of the deed or other written instrument, the officer can correct his certificate of acknowledgment in accordance with the facts,⁴⁴ but he can not correct the

41. *Harrison v. Oakman*, 56 Mo. 390; *Walter v. Weaver*, 57 Tex. 569.

42. A certificate of acknowledgment of a married woman's deed, stating that the woman was deaf and dumb and that the nature of the transaction had been duly explained to her by signs, in the presence of the officer, by a person accustomed to converse with her in that manner, and that she had by the same means signified her assent, was allowed in court. *In re Harper*, 6 M. & G. 732, 7 Scott N. R. 431.

43. Certificate must be dated and signed by the officer making it. *Andrews v. Marshall*, 26 Tex. 212; *Clark v. Wilson*, 127 Ill. 449, 19 N. E. 860, 11 A. S. R. 143; *Marston v. Bradshaw*, 18 Mich. 81, 100 Am. Dec. 852.

Certificate must bear impress of official seal. *Worsham v. Freeman*, 34 Ark. 55; *Little v. Dodge*, 32 Ark. 453; *Blagg v. Hunter*, 15 Ark. 246; *Meskimen v. Day*, 35 Kan. 46, 10 P. 114; *Hammond v. Coleman*, 4 Mo. App. 307; *Ballard v. Perry*, 28 Tex. 347; *McKeller v. Peck*, 39 Tex. 381; *Daugherty v. Yeats*, 13 Tex. Civ. App. 646, 35 S. W. 937.

Using the seal of some other office, though it be done through mistake, is not sufficient. *McKeller v. Peck*, 39 Tex. 381.

44. *Wannall v. Kem*, 51. Mo. 150; *Attleborough Bank v. Hughs*, 10 Mo. App. 7; *In Miller v. Powell*, 53 Mo. 250, the court intimates that an officer might, under certain circumstances, be compelled by man-

acknowledgment itself when it has in fact been defectively taken.⁴⁵ In such cases the grantors may reappear before the officer and again acknowledge the instrument, or if it has been recorded, execute and acknowledge a new deed in lieu of the one so defectively acknowledged.⁴⁶ When so corrected the instrument, as between the parties, relates back to the time of the first acknowledgment.⁴⁷ The weight of authority seems to be that after the deed has been recorded the officer who took the acknowledgment can not then correct his certificate.⁴⁸ The rule is well established that after

damus to correct a defective certificate. See, also, *Westhafer v. Patterson*, 120 Ind. 459, 22 N. E. 414, 16 A. S. R. 330. In Texas the court of civil appeals has held that after the instrument has passed out of the hands of the officer, he cannot amend his certificate. *Stone v. Sledge*, (Texas C. A.), 24 S. W. 697.

But the supreme court in the same case, *Stone v. Sledge*, 87 Tex. 55, 26 S. W. 1068, 47 A. S. R. 65, says, "It is unnecessary for us to determine whether the amended certificate . . . would have made it a valid conveyance. . . . But, in order to prevent any misconception which may arise from the opinion of the court of civil appeals on that question we will say that, if the point were before us, we are inclined to think that we should be constrained to hold that the officer while in office, had the power to amend his certificate. See, also, *McKeller v. Peck*, 39 Tex. 381.

45. If the acknowledgment was not properly made the certificate cannot be corrected. *Johnson v. Taylor*, 60 Tex. 360; *Looney v. Adamson*, 48 Tex. 621; *Carney v. Hoppel*, 17 Ohio St. 39; *Garth v. Fort*, 15 Lea (Tenn.), 683.

46. *Breetling v. Chester*, 88 Tex. 586, 32 S. W. 527; *Halbert v. Hendrix*, (Tex. Civ. App.), 26 S. W. 911; *Halbert v. Bennett*, (Comp. Case), 26 S. W. 943; *Nelson v. Holley*, 50 Ala. 3; *Bradley v. Cole*, 164 Ill. 116, 45 N. E. 438; *Ludlow v. O'Neill*, 29 Ohio St. 181; *McMullin v. Feagan*, 21 W. Va. 233.

47. *Vancleve v. Wilson*, 73 Ala. 387; *Stroud v. McDaniel*, 12 Lea (Tenn.), 617.

48. *Hodges v. Winston*, 95 Ala. 514, 11 So. 200, 36 A. S. R. 241; *Griffith v. Ventress*, 91 Ala. 366, 8 So. 312, 11 L. R. A. 193, 24 A. S. R. 918; *Bours v. Zachariah*, 11 Cal. 281, 70 Am. Dec. 779; *Durham v. Stephenson*, 41 Fla. 112, 25 So. 284.

Until a certificate of acknowledgment has been recorded it is, in its nature, only an act in *pais*, and is alterable by the officer; but the

the expiration of his term, the officer, though he may have been re-elected or appointed to the same office, can not then correct his certificate.⁴⁹

Equity does not aid the defective execution of statutory powers, and as officers derive their authority to take acknowledgments from the statute, a court of equity as such has no power to correct mistakes made in the certificate.⁵⁰ It is provided by statute in Texas and several other states that where an acknowledgment is properly taken but defectively certified, the certificate may be amended by the court upon the application of any party interested.

Sec. 45.—Defects cured by statute.—

Statutes have been enacted in most of the states validating defective acknowledgments and certificates of acknowledgment, and making the record of defectively acknowledged deeds notice to subsequent purchasers. These statutes generally have a retroactive effect, but will not cure an acknowledgment or certificate that has been adjudged defective prior to the passage of the act; but unless specially provided that it does not affect pending suits they apply to instruments in

authority of the clerk to make and record a certificate of the acknowledgment of a deed was *functus officio*, as soon as the record was made. *Elliott v. Piersoll*, 1 Pet. (U. S.) 328, 26 L. Ed. 164.

49. A new certificate of a married woman's acknowledgment made by an officer four years after the original certificate, and after the expiration of the term of office held by him when he made the original certificate, although he has been re-elected and holds the same office at the time of making the second certificate, is invalid. *Griffith v. Ventress*, 24 Am. St. Rep. 918; *Enterprise Transit Co. v. Sheedy*, 49 Am. Rep. 130.

50. *Wannell v. Kem*, 51 Mo. 150; *Miller v. Powell*, 53 Mo. 252; *Lindly v. Smith*, 58 Ill. 250; *Heaton v. Fryberger*, 38 Iowa, 185. It has been held in Arkansas, that when an officer, duly authorized to take acknowledgments, makes a proper certificate but misdescribes himself, a court of equity will correct the mistake. *Simpson v. Montgomery*, 25 Ark. 365, 99 Am. Dec. 228.

litigation.⁵¹ It has been often claimed that these acts were unconstitutional, but the courts have generally held them constitutional on the ground that such statutes effect only the method of proof, and do not create or impair any obligation, but simply carry into effect the intention of the contracting parties.⁵² Such a contract as a court of equity would ordinarily enforce is made valid and binding in law, but if such acts impair vested rights or affect the rights of strangers to the instrument, they are to that extent void.⁵³ It has been held by some of the courts that such statutes can not cure a fatal defect in a married woman's acknowledgment, her acknowledgment being an essential part of her deed.⁵⁴

51. Reid v. Hart, 45 Ark. 41; Johnson v. Richardson, 44 Ark. 365.

52. No one can have or acquire a vested right in a rule of evidence, hence, laws regulating rules of evidence may relate to or embrace past transactions. Reid v. Hart, 45 Ark. 41; Togy v. Holcomb, 64 Iowa, 621, 21 N. W. 111.

Curative acts are constitutional. Johnson v. Richardson, 44 Ark. 365; Cupp v. Welch, 50 Ark. 294, 7 S. W. 139; Sumner v. Mitchell, 29 Fla. 179; 10 So. 562, 14 L. R. A. 815, 30 A. S. R. 106; Newman v. Samuels, 17 Iowa, 528. The constitution of the United States prohibits the legislatures of the different states from passing *ex post facto* laws, but does not prohibit them from passing retrospective laws, that are not *ex post facto*. Watson v. Mercer, 8 Pet. (U. S.) 88, 8 L. Ed. 876.

53. McGeehe v. McKinzie, 43 Ark. 156; Gatewood v. Hart, 58 Mo. 261; Bruton v. Seevers, 12 Iowa, 386; Gordon v. Callett, 107 N. C. 362, 12 S. E. 332.

54. Curing acts are unconstitutional, in so far as they are intended to affect acknowledgments of married women. Alabama Ins. Co. v. Boykin, 38 Ala. 512; Pierce v. Patton, 7 B. Mon. (Ky.) 162, 45 Am. Dec. 61; Grove v. Todd, 41 Md. 633, 20 Am. Rep. 76.

Other courts have held that defective acknowledgments of married women may be properly cured by statute, on the theory that the statute gives to the instrument the effect intended by the parties. Johnson v. Richardson, 44 Ark. 365; Johnson v. Parker, 51 Ark. 419. 11 S. W. 681; Williamson v. Lazarus, (Ark.) 49 S. W. 974; Chestnut v. Shane, 16 Ohio, 599, 47 Am. Dec. 387; Shrawder v. Snyder, 142 Pa. St. 1, 21 Atl. 796; Skellinger v. Smith, 1 Wash. Terr. 369.

Sec. 46.—Liability of officer for making false certificate.—

If a notary or other officer, from malice or through gross negligence, make a false certificate of acknowledgment, he and his sureties on his official bond will be liable to any person damaged by such willful or negligent act. It is the duty of the notary or other officer taking an acknowledgment to know the truth of all matters to which he certifies. And the fact that he did not know that his certificate was false is no excuse, unless he can show that he used ordinary diligence to ascertain the truth of the matters about which he certified, and that he had good reason to believe that they were true.⁵⁵

The correct rule probably is that such acts will cure defective certificates, where the acknowledgment of a married woman has in fact been properly taken, but defectively certified; but the statute cannot cure an acknowledgment of a married woman, that was not properly taken by the officer. *Johnson v. Taylor*, 60 Tex. 360; *Hayden v. Moffatt*, 74 Tex. 650, 12 S. W. 820, 15 A. S. R. 866; *B. & L. Association v. Goforth*, 94 Tex. 264, 59 S. W. 871; *Downs v. Patterson*, (Tex. Civ. App.) 99. S. W. 751.

55. A notary public in taking and certifying an acknowledgment failed to state in his certificate that the person making the same was known to him or was proved by witnesses examined by him for that purpose. The court held that he was guilty of gross and culpable negligence and was responsible on his official bond to the parties injured, and such neglect could not be excused from the fact that the certificate was a printed one and had been partially filled by grantor's attorney. If the notary read the certificate before signing it, the omission must have been known to him; if he did not read it, he was equally negligent. *Fogarty v. Findley*, (Cal.) 70 Am. Dec. 714.

By accepting the office, a notary public holds himself out to the world as a person competent to perform the duties of such office. Entering upon the discharge of its duties he contracts with those who employ him, that he will perform such duties with integrity, diligence and skill, and a person employing a notary is not required to determine the validity or legality of his acts. *Id.*

WHEN A NOTARY CERTIFIES that the grantor or person acknowledging the instrument is known to him, he does so at his own risk. The law warns him when he does not actually, personally know the party to use certain precautions, the least of which is proof of the

identity of the party by a credible witness who does actually, personally know him. *State v. Meyer*, 2 Mo. App. 413.

It is no defense that the notary believed his certificate to be true; his official duty is when he is not personally acquainted with the person making the acknowledgment, to ascertain his identity by the testimony of a credible witness. *Id.*

A notary can not be held liable unless his negligence is the proximate cause of the injury or loss. *Oakland Savings Bank v. Murfey*, 68 Cal. 455; *People v. Barteils*, 138 Ill. 322, 27 N. E. 1091; *People v. Butler*, 74 Mich. 643.

CHAPTER IV.

ACKNOWLEDGMENTS UNDER THE STATUTES OF
ARKANSAS, KANSAS, MISSOURI, OKLAHOMA
AND TEXAS.

Sec.	Sec.
47. Instruments which should be acknowledged.	52. Acknowledgment by corporations.
48. Notaries may take acknowledgments.	53. Acknowledgment by attorney in fact.
49. Identification of persons making acknowledgments	54. Acknowledgment by a firm.
50. Examination in general.	55. Arkansas forms.
51. Acknowledgment of married women—examination.	56. Kansas forms.
	57. Missouri forms.
	58. Oklahoma forms.
	59. Texas forms.

Sec. 47.—Instruments which should be acknowledged or proved.

The following instruments should be acknowledged or proved and recorded, viz.:

In ARKANSAS, every instrument in writing that conveys any real estate, or whereby real estate may be affected in law or equity, powers of attorney, mortgages for real or personal estate, acceptance of dower, satisfaction by wards, contracts for labor, marriage contracts, and certificates of limited partnership.¹

In KANSAS, all conveyances and instruments affecting real estate, including powers of attorney, mortgages, and acknowledgments of satisfaction thereof; also charters of intended corporations, limited partnership certificates, and assignments for the benefit of creditors, and all declarations or creations of trusts or powers, in relation to real estate.²

1. Kirby's Dig. Ark. secs. 743-750, 5163-5164, 5395, 5401-5404, 5807.

2. G. S. Kan. secs. 382, 1654, 1673, 5199, 5490, 5519.

IN MISSOURI, every instrument in writing that conveys any real estate, or whereby real estate may be affected in law or equity, powers of attorney, or other instruments containing a power to convey real estate as agent or attorney for the owner thereof, mortgages and deeds of trust of personal property, certificates of redemption of mortgaged property, bills of sale, where sales are conditional, leases in the nature of conditional sales, articles of agreement of manufacturing and business corporations and of mutual savings, fund, loan and building associations, statements required to be made and signed by persons forming a limited partnership, gifts of personal property, plats of additions to cities or towns, assignments for benefit of creditors, and marriage contracts.³

IN OKLAHOMA.—All deeds, mortgages and instruments affecting real estate, all conveyances by corporations must be acknowledged; charters for private corporations shall be acknowledged by the incorporators, and articles of special partnership by each of the partners; all requests by parents or guardians for marriage licenses to be issued to males under the age of twenty-one years and females under the age of eighteen years; and no deed or instrument affecting real estate shall be recorded until it has been duly acknowledged.⁴

IN TEXAS.—All deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances, powers of attorney or other instruments of writing concerning any lands and tenements or goods and chattels, or movable property of any description, charters of intended corporations, limited partnership certificates, marriage contracts, and assignments for the benefit of creditors.⁵

**Sec. 48.—Notaries may take acknowledgments and proofs
—Interest.—**

A notary may take the acknowledgment or proof of the execution of any instrument required to be recorded, if he is

3. R. S. Mo. secs. 896, 2792, 2889, 8294.

4. R. L. Okla. secs. 1169, 1188, 1226, 3885.

5. R. S. Tex. 6824-6829, 6833, 6841.

disinterested. If interested as grantee, trustee, or otherwise, he is disqualified.⁶

Sec. 49.—Identification of persons making acknowledgments.—

Where a party appears to make an acknowledgment, the first question is as to his identity. If the notary is personally acquainted with him, and knows him to be the person by whom the instrument appears to have been executed, that is sufficient, and no identification is necessary. In Kansas and Oklahoma, if the notary is not acquainted with him, he can not take his acknowledgment. In Arkansas the affidavit or proof by the witness must be indorsed on the deed. In Texas it must be noted in the certificate. Kirby's Dig. Ark. sec. 747. R. S. Mo. 2798, R. L. Okla. sec. 1179; R. S. Tex. art. 6802.

In MISSOURI, the notary may take the acknowledgment if the party produces two credible witnesses and proves by their testimony under oath that he is known by them to be the same person who appears to have executed the instrument.⁷

In ARKANSAS and TEXAS, identification in like manner by one witness is sufficient. Each witness should be duly sworn or affirmed before being examined. The identification should be positive.

6. A notary who acts as agent in procuring a loan but has no interest either in the loan or the property mortgaged, may take the acknowledgment to the mortgage. Penn v. Gawin, 56 Ark. 511; Bierer v. Fretz, 32 Kan. 329, 4 P. 284.

A notary, who appears in the face of the instrument as agent of one of the parties, cannot take the acknowledgment. Brown v. Moore, 38 Tex. 646. Sample v. Erwin, 45 Tex. 597.

A grantee cannot, as notary, take his grantor's acknowledgment. Greenlee v. Smith, 4 Kan. App. 733, 46 P. 543.

7. When an officer assumes personal knowledge, he does so at his own risk. The law warns him when he has not personal knowledge of his own to resort to certain observances, which is sufficient in practice

Sec. 50.—Acknowledgments—Examination of persons acknowledging written instruments.—

In ARKANSAS and TEXAS, the grantor should be required to acknowledge the execution of the instrument for the purposes and consideration therein expressed, or therein mentioned and set forth.

In KANSAS, MISSOURI and OKLAHOMA, he should be required to acknowledge the execution of the instrument as his free act and deed for the uses and purposes therein expressed, or therein set forth. Acknowledgments are properly taken by asking the grantor or grantors the following or like questions:

1. Is this your signature? (If the officer has not seen the grantor sign the instrument.)

2. Do you acknowledge that you have executed this instrument (in Arkansas) for the consideration and purposes therein mentioned and set forth? (In Kansas or Missouri) as your free act and deed for the purposes therein expressed? (In Oklahoma) as your free and voluntary act and deed for the uses and purposes therein set forth? (In Texas) for the purposes and consideration therein expressed?

Sometimes a grantor makes his mark instead of signing
his name, the name being written thus: JOHN X SMITH.
mark

In such case, if the party acknowledges that he made the mark, it is sufficient.

Sec. 51.—Acknowledgments by married women.—

In ARKANSAS, a married woman, in order to relinquish dower in her husband's real estate, must make her voluntary appearance before the proper court or officer and, in the absence of her husband, declare that she has, of her own free

to prevent impositions. The very lowest of these is proof by two witnesses, who are personally acquainted with the grantor. In case of any doubt the number of witnesses should be increased. *State v. Meyer*, 2 Mo. App. 413.

will signed her relinquishment of dower, for the purposes therein contained and set forth, without compulsion or undue influence of her husband.⁸ In Kansas and Oklahoma, the right of dower has been abolished;⁹ husband and wife join in conveyance of their joint estates. Married women have the same rights as married men to convey their separate estates.¹⁰ In Oklahoma, a married woman may convey or encumber her interest in the homestead, without being joined by her husband; and may convey her separate property without his consent.¹¹ In Kansas, she may act as trustee and may, if authorized in the appointment, convey the trust property without being joined by her husband.¹² In Missouri, a married woman relinquishes dower by joining with her husband in the conveyance.¹³ No separate acknowledgment is required in Kansas, Missouri or Oklahoma; but in Missouri the certificate must show that grantors were husband and wife.¹³

In TEXAS, a married woman executing a deed, or other instrument required to be acknowledged, must be examined privily and apart from her husband. The officer must, out of sight and hearing of her husband, show her the instrument to be executed, and explain fully to her its legal effect, and state to her the amount of the consideration for which it is being made. It is not sufficient to ask her if the instrument has been explained to her; the officer must explain it himself.

After she has signed the instrument he must ascertain from her that she signed the same willingly for the purposes and consideration therein stated, and that she does not wish to retract it.^{13a}

8. Kirby's Dig. Ark. sec. 751, R. L. Okla. sec. 1143.

9. G. S. Kan. sec. 2661.

10. G. S. Kan. sec. 4873.

11. R. L. Okla. sec. 1152.

12. R. S. Mo. sec. 2788.

13. R. S. Mo. sec. 2799.

13a. R. S. Tex. art. 6802; *Johnson v. Taylor*, 60 Tex. 369.

Sec. 52.—Acknowledgments by corporations.—

A deed or other conveyance made by a corporation should be signed by its president in his official capacity and attested by its secretary, and should be sealed with the corporate seal; it should be acknowledged by the president. Sometimes such instruments are signed by the directors of the corporation. If signed by the directors, it should be acknowledged by them also.¹⁴

Forms for acknowledgments by corporations.

The following form of certificate may be used in Arkansas, Kansas and Texas:

THE STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public within and for said county, on this day personally appeared C. D., president of the — Company, a corporation of the state of —, party to the foregoing instrument, personally known [or, proved, etc.] to me to be the same person whose name is subscribed to said instrument as president of said company, and duly acknowledged that, as such president, he executed said instrument and affixed said company's corporate seal thereto, and that said company executed said instrument through and by him [*in Texas insert, "for the consideration and purposes therein expressed;" in Arkansas, "therein mentioned and set forth."*]

Given under my hand and seal of office this — day of —, A. D. 19—.

[SEAL.]

E. F., Notary Public.

In Arkansas and Kansas add date of expiration of term.

In Missouri the following form is required in the acknowledgments of corporations and joint stock companies:

STATE OF MISSOURI, }
County of —. } ss.

On this — day of —, 19—, before me, E. F., a notary public in and for said county, appeared A. B., to me personally known, who, being by me duly sworn [or affirmed], did say that he is the president [or other officer or agent of the corporation, or association] of [describing

14. Conveyance must be sealed with corporate seal. Texas C. & M. Co. v. Dublin C. & M. Co. (Tex. Civ. App), 38 S. W. 404.

the corporation or association] and that the seal affixed to foregoing instrument is the corporate seal of said corporation [*or association*], and that said instrument was signed and sealed in behalf of said corporation [*or association*] by authority of its board of directors [*or, trustees*], and said A. B. acknowledged said instrument to be the free act and deed of said corporation [*or association*].

Given under my hand and seal of office the day and year above written.

[SEAL.]

E. F.

Notary Public within and for said County.

My official term expires, etc.

In case the corporation or association has no seal, omit the statements in regard to seal and at the end of the certificate state, "and that said corporation (or association), has no seal."¹⁵

In Oklahoma.—Every deed or other instrument, affecting real estate executed by a corporation, must be acknowledged by the officer or person subscribing the name of the corporation thereto, in substantially the following form:

STATE OF OKLAHOMA, } ss.
 ——— County. }

Before me, a ———, in and for said county and state, on this ——— day of ———, 19——, personally appeared ———, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument, as its [attorney in fact, president, or vice president, or mayor, as the case may be], and acknowledged to me that he executed the same as his free and voluntary act and deed; and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.¹⁶

[SEAL.]

E. F.,

Notary Public for said county and state.

My commission expires on the—— day of ———, 19——.

Sec. 53.—Acknowledgment by attorney in fact.—

When a deed is executed by an attorney in fact, he should make the acknowledgment. It should state that he executed the instrument as attorney in fact of the grantor.

15. R. S. Mo. Sec. 2799.

16. R. L. Okla. sec. 1188.

In other respects the acknowledgment should be the same as where the grantor himself makes the acknowledgment.

The following form may be used in Arkansas, Kansas and Texas, viz.:

THE STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public within and for said county, personally appeared C. D., who is personally known (*or*, proved, etc.) to me to be the same person whose name is subscribed to the foregoing instrument as attorney in fact of E. F., the party thereto, and the said C. D. acknowledged that he executed said instrument for E. F., as his attorney in fact, for the consideration and purposes therein (In Ark. mentioned and set forth). In Tex., expressed.)

Given under my hand and seal of office this — day of —,
A. D. 19—.

(SEAL)

A. B., Notary Public.

If the acknowledgment is taken by an Arkansas, Kansas, Missouri or Oklahoma notary, he should in all cases state when his term of office expires.

The following form may be used in Missouri:

STATE OF MISSOURI, }
County of —. } ss.

On this — day of —, 19—, before me, E. F., a notary public in and for said county, personally appeared A. B., to me known (*or if not personally known*, who was proven, etc.) to be the identical person who executed the foregoing instrument in behalf of C. D., as his attorney thereunto appointed, and acknowledged that he executed the same as the free act and deed of C. D.

(SEAL)

E. F.,

Notary public within and for said County.

My official term expires, etc.

The following form is sufficient in Oklahoma:

STATE OF OKLAHOMA, }
County of —. } ss.

Before me, A. B., a notary public in and for said county and state, on this day personally appeared C. D., attorney in fact for E. F., known to me to be the identical person who executed the within and foregoing instrument as attorney in fact for the said E. F., and acknowledged to me that he executed the same freely and voluntarily as the

free and voluntary act and deed of the said E. F., for the uses and purposes therein set forth.

Given under my hand and seal of office this — day of —, 19—.
(SEAL) A. B.,

Notary public, — County, Oklahoma.

My commission expires on the — day of —, 19—.

Sec. 54.—Firm acknowledgments.—

Each partner is required to join in firm conveyances of real estate, but a conveyance of personal property may be signed in the firm name by a single partner. Where the firm name is so signed, the partner signing should acknowledge the deed individually for the firm, and his name should be stated in the certificate.¹⁷

The following form of certificate may be used:

THE STATE OF —, }
County of —. } ss.

Before me, A. B., notary public within and for said county, on this day personally appeared C. D., member of the firm of E. F. & Co., party to the foregoing instrument, who is personally known (*or*, proved, etc.) to me to be the person who subscribed the firm name of E. F. & Co. to said instrument as a party thereto, and acknowledged that he, as a member of said firm, executed said instrument, and that said firm executed the same through him for the (*in* Kansas and Texas *insert*, "consideration and") purposes therein expressed (*in* Arkansas, "mentioned and set forth;" in Missouri "as their free act and deed").

Given under my hand and seal of office this — day of —,
A. D. 19—.

(SEAL.)

A. B., Notary Public.

Baldwin v. Richardson & Co., 33 Tex. 33; Sloan v. The Owens, Lane & Dyer Machine Co., 70 Mo. 206; Keck v. Fisher's Adm'r, 58 Mo. 534.

17. A mortgage executed by both members of a firm and acknowledged by only one of them is insufficient. *Sanders v. Repoon*, 4 Fla. 465; *Treadwell v. Sackett*, 50 Barb. (N. Y.) 440; but a mortgage executed by one of the parties signing the firm name to it may be acknowledged by the member signing it and the acknowledgment will be sufficient. It makes no difference whether or not the name of the person signing the mortgage appears in the firm name, but the certificate should show that he is a member of the firm, and that he signed

Sec. 55.—Arkansas forms.—

FORMS FOR ACKNOWLEDGMENT.

STATE OF ARKANSAS, }
 County of ———, } ss.

Before me —————

a notary public within and for said county and state personally appeared on this ——— day of ———, 19—, to me well known (or to me unknown, but who was proven to my satisfaction upon the oath of ————— to be the identical ————— whose name appears) as the party grantor in the foregoing deed and acknowledged that he executed the same for the consideration and purposes therein mentioned and set forth. And I do so certify.

Given under my hand this ——— day of ——— 19—.

[SEAL.]

[Official Signature.]

My commission expires on the ——— day of ———.

ACKNOWLEDGMENT BY HUSBAND AND WIFE OF DEED TO HOMESTEAD.

STATE OF ARKANSAS, }
 County of ———, } ss.

Before me —————, a notary public within and for the county and state aforesaid on this ——— day of ———, 19—, personally appeared ————— and ————— his wife to me well known [*or*, being

the firm name to the mortgage. *Keck v. Fisher*, 58 Mo. 532; *Leon, etc. Land Co. v. Dunlap*, 4 Tex. Civ. App. 315; *McCoy v. Baley*, 21 Fla. 103; *Citizens Nat'l Bank v. Johnson*, 79 Iowa, 290; *McNeal Pipe, etc. Co. v. Walton*, 4 N. Car. 178.

In the case of *Keck v. Fisher*, 58 Mo. 532, the form of the certificate was as follows:

Be it remembered that H. H. & Co., by C. B., a member of the firm of H. H. & Co., who is personally known to me to be the person who subscribed the foregoing as a party thereto, appeared before me and acknowledged to me that he executed and delivered the same for the uses and purposes therein mentioned. This certificate was held sufficient. *Sloan v. Owens, etc. Mach Co.*, 70 Mo. 206; *Hughes v. Morris*, 110 Mo. 306, 19 S. W. 481.

The parties undertaking to execute the deed or conveyance must have authority to act for the firm, either by the general scope of their business, or previous consent, or subsequent ratification of the other members of the firm; otherwise the whole instrument will be void. *Maloye v. Conbrough*, 96 Cal. 649; *Shirley v. Fearne*, 33 Miss. 653; 69 Am. Dec. 375.

unknown, was proven to my satisfaction by the oath of — to be the identical persons whose names appear] as the parties grantor in the foregoing instrument, and acknowledged to me that they had each executed the same for the consideration and purposes therein mentioned and set forth.

And I further certify that the said — wife of the said —, in the absence of her said husband declared that she had of her own free will signed the relinquishment of dower for the purposes therein contained and set forth without compulsion or undue influence of her husband and I so certify.

In testimony whereof I hereunto set my hand and affix my official seal on this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

My commission expires on the — day of —, 19—.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF ARKANSAS, } ss.
County of —.

Be it remembered, that on this day came before me, a notary public in and for said county and state, A. B., one of the subscribing witnesses to the foregoing [*or, within*] deed, to me personally well known [*or, A. B., to me satisfactorily proved by his affidavit (or, the affidavit of C. D.,)*] indorsed upon the foregoing (or within) deed to be the same A. B. whose name is subscribed as a witness to said deed], who, being by me first duly sworn, stated that he saw E. F., the grantor in said deed, subscribe the same on the day of its date [*or, that E. F., the grantor in said deed, acknowledged in his presence, on the — day of —, A. D., 19—, that he had executed said deed for the consideration and purposes therein expressed*], and that he and G. H., the other subscribing witness, subscribed said deed as attesting witnesses at the request of said grantor.

In testimony whereof I have hereunto set my hand and seal of office, on this — day of —, A. D. 19—.

[SEAL.]

I. J., Notary Public.

My official term expires, etc.

Sec. 56.—Kansas forms.—

STATE OF KANSAS, } ss.
County of —,

Be it remembered, that on this — day of —, A. D. 19—, before me, E. F., a notary public within and for said county, came A. B. and C. D., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument

as parties thereto, and they duly acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.]

E. F., Notary Public.

My term of office expires, etc.

If the grantor die, before acknowledgment of the deed, or if for any reason his attendance cannot be procured, or if, having appeared, he refuses to acknowledge a deed he has executed, proof of the due execution and delivery of the deed may be made by any competent testimony.¹⁸

FORM FOR USE WHERE GRANTOR APPEARS AND REFUSES TO
ACKNOWLEDGE.

STATE OF KANSAS, }
County of —, } ss.

Be it remembered, that on this — day of —, A. D. 19—, before me, G. H., a notary public within and for said county, personally appeared A. B., who is personally known [or, proved, etc.] to me to be the identical person whose name is subscribed to the foregoing instrument as a party, and refused to acknowledge the execution of the same; and that thereupon personally appeared C. D. and E. F., who, being by me first duly sworn, testified and proved to my satisfaction that said A. B. had executed and delivered said instrument in their presence, and that they had thereupon at his request subscribed their names thereto as attesting witnesses.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[SEAL.]

G. H., Notary Public.

FORM FOR USE WHEN THE GRANTOR'S ATTENDANCE CAN NOT
BE PROCURED.

STATE OF KANSAS, }
County of —, } ss.

Be it remembered, that on this — day of —, A. D. 19—, before me, G. H., a notary public within and for said county, personally appeared A. B. and C. D., who, being by me first duly sworn, testified and proved to my satisfaction that E. F., whose name is subscribed to the foregoing [or, within] instrument as a party, has died since executing the same [or state what the witness proved to be the reason why

18. G. S. Kan. sec. 1663.

the grantor's attendance could not be procured]; that said E. F. had executed and delivered said instrument in their presence, and that they had thereupon at his request subscribed their names thereto as attesting witnesses.

In testimony, etc.

Sec. 57.—Missouri forms.—

STATE OF MISSOURI, }
County of —. } ss.

On this — day of —, 19—, before me personally appeared A. B. and C. D., his wife, to me known [*or, proven*] to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Given under my hand and seal of office the day and year above written.

[SEAL.]

E. F., Notary Public.

My official term expires, etc.

GRANTOR NOT KNOWN, BUT IDENTITY PROVED BY SUBSCRIBING WITNESSES.

STATE OF MISSOURI, }
County of —. } ss.

Be it remembered that — this day appeared before the undersigned a — within and for said county, and also came — and —, both of whom reside in said county, state of Missouri, two witnesses, who having been by me first duly sworn depose and say, that the said — is the person whose name is subscribed to the within and foregoing deed (or instrument of writing) as a party thereto, and that they, the said witnesses, subscribed their names to such instrument as witnesses thereof, and that the said — then and there acknowledged that he executed and delivered the same as his free act and deed for the uses and purpose therein contained.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in — county, Missouri, this — day of —, 19—.

My commission as a Notary Public expires on the — day of —, 19—.

Notary Public.

PROOF BY SUBSCRIBING WITNESS.

THE STATE OF MISSOURI, }
County of —. } ss.

Be it remembered that —, who is personally known to the undersigned a — within and for said county, to be the same per-

son whose name is subscribed to the within and foregoing deed (or instrument of writing) as a witness thereto, this day appeared before me; and the said ——— having been by me duly sworn, deposes and says that ———, whose name is subscribed to said deed (or instrument of writing) as a party thereto, is the person who executed the said deed (or instrument of writing) and that he, the said ——— subscribed his name to said deed (or instrument of writing) as a witness thereof.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in ——— county, Missouri, this ——— day of ———, 19—.

My commission as a Notary Public expires on the ——— day of ———, 19—.

Notary Public.

Sec. 58.—Oklahoma forms.—

The revised laws of Oklahoma set out forms for warranty deed and mortgage on real estate as follows:

WARRANTY DEED TO REAL ESTATE.

Know all men by these presents: That ——— party of the first part, in consideration of the sum of ——— dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto ——— the following described real property and premises, situated in ——— County, state of Oklahoma, to-wit: (*here describe premises*) together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same. To have and to hold said described premises unto said party of the second part, ———, heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this ——— day of ———, 19—.

(R. L. Okla. sec. 1184.)

FORM OF MORTGAGE UPON REAL ESTATE.

Know all men by these presents: That, ——— and ———, of the county of ——— and state of Oklahoma, parties of the first part, have mortgaged and hereby mortgage to ——— of the county of and state of ———, party of the second part, the following described real estate and premises, situated in the county of ———, state of Oklahoma, to wit (*here describe premises*), with all of the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same. This mortgage is given to secure the principal sum of ——— dollars, and interest thereon at the rate of ——— per centum per annum, payable

annually, according to the terms of a certain promissory note executed by — described as follows, towit: (*here describe note*)¹⁹

Dated this the — day of —, 19—.

FORM FOR ACKNOWLEDGMENT.

STATE OF OKLAHOMA, }
County of —. } ss.

Before me, A. B., a notary public in and for said county and state, on this — day of —, 19—, personally appeared C. D., known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office this — day of —, 19—.

A. B.,

Notary public, — county, Oklahoma.

My commission expires on the — day of —, 19—.

There is no provision in the laws of Oklahoma for proof by a subscribing witness, or in any other manner except by acknowledgment.

Sec. 59.—Texas forms.—

STATE OF —, }
County of —. } ss.

Before me — a notary public in and for — county — on this day personally appeared —, known to me (*or*, proven to me on the oath of —, who is known to me to be a credible person) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

SEPARATE ACKNOWLEDGMENT OF WIFE.

THE STATE OF TEXAS, }
County of —. } ss.

Before me, A. B., notary public within and for said county, on this day personally appeared — —, wife of — —, known to me [*or*, proven to me on the oath of — —] to be the person whose name is subscribed to the foregoing instrument, and having been exam-

ined by me privily and apart from her husband, and having the same fully explained to her, she, the said ———, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this ——— day of ———,
A. D. 19—.

[SEAL.]

A. B., Notary Public.

JOINT ACKNOWLEDGMENT OF HUSBAND AND WIFE.

THE STATE OF TEXAS, }
County of ———. } ss.

Before me, X. Y., notary public within and for said county, on this day personally appeared A. B. and C. D., his wife, known to me [*or*, proved to me on the oath of ———] to be the persons whose names are subscribed to the foregoing instrument, and the said A. B. acknowledged to me that he executed the same for the purposes and considerations therein expressed. And the said C. D., wife of A. B., having been examined by me privily and apart from her husband, and having said instrument shown and fully explained to her, she, the said C. D., acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this ——— day of ———,
A. D. 19—.

[SEAL.]

X. Y., Notary Public.

PROOF BY SUBSCRIBING WITNESS.

THE STATE OF TEXAS, }
County of ———. } ss.

Before me, A. B., notary public within and for said county, on this day personally appeared ———, known to me [*or*, proved to me on the oath of ———] to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and, after being duly sworn by me, stated on oath that he saw ———, the grantor, or person who executed the foregoing instrument, subscribe the same [*or*, that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purpose and consideration therein expressed], and that he had signed the same as a witness at the request of the grantor [*or person who executed the same*].

Given under my hand and seal of office this ——— day of ———,
A. D. 19—.

[SEAL.]

A. B., Notary Public.

CHAPTER V.

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS
CONVEYING OR AFFECTING LANDS IN OTHER
STATES.

(For Depositions in Various States see Chap. X.)

Sec.		Sec.	
60.	When notaries may take acknowledgments — authentication of notaries' certificates.	82.	Mississippi forms.
61.	Alabama forms.	83.	Montana forms.
62.	Alaska forms.	84.	Nebraska forms.
63.	Arizona forms.	85.	Nevada forms.
64.	California forms.	86.	New Hampshire forms.
65.	Colorado forms.	87.	New Jersey forms.
66.	Connecticut forms.	88.	New Mexico forms.
67.	Delaware forms.	89.	New York forms.
68.	District of Columbia forms.	90.	North Carolina forms.
69.	Florida forms.	91.	North Dakota forms.
70.	Georgia forms.	92.	Ohio forms.
71.	Idaho forms.	93.	Oregon forms.
72.	Illinois forms.	94.	Pennsylvania forms.
73.	Indiana forms.	95.	Rhode Island forms.
74.	Iowa forms.	96.	South Carolina forms.
75.	Kentucky forms.	97.	South Dakota forms.
76.	Louisiana forms.	98.	Tennessee forms.
77.	Maine forms.	99.	Utah forms.
78.	Maryland forms.	100.	Vermont forms.
79.	Massachusetts forms.	101.	Virginia forms.
80.	Michigan forms.	102.	Washington forms.
81.	Minnesota forms.	103.	West Virginia forms.
		104.	Wisconsin forms.
		105.	Laws of Wyoming.

Sec. 60.—When notaries may take acknowledgment and proofs—When the execution of deeds by married women may be proved—Authentication of notaries' certificates.

Notaries may take acknowledgments and proof of deeds conveying or mortgaging land situated in any state or terri-

tory of the United States. The forms which should be used are given in the succeeding sections of this chapter.

By reading the proper form in any particular case, the notary will be able to understand what his duties are. Thus, where the form of certificate states that the wife has been separately examined, a separate examination is necessary; the same is true as to other facts. Where a form of proof by a subscribing witness, or subscribing witnesses, or a party, is given or referred to, the instrument may be proved; otherwise it can not. It seems that the execution of a deed by a married woman can not be proved under the laws of those states where a separate examination is necessary.

In most states a notary's certificate, under seal, proves itself. Where a certificate as to the genuineness of the notary's signature, etc., is necessary, a form is given or referred to.

Where a certificate is made by an Arkansas, Missouri, Kansas or Oklahoma notary, it should state when his term will expire, if the date of its expiration is not designated in his seal.

For the laws of Arkansas, Kansas, Missouri, Oklahoma and Texas, see chapter IV.

Sec. 61—Alabama forms.—

GENERAL FORM OF CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —, } ss.

I, A. B., a notary public in and for said county, hereby certify that C. D. [*if his wife joins in the acknowledgment, add, and E. D., his wife,* whose name is [*or, names are*] signed to the foregoing conveyance, and who is [*or, are*] known to me, acknowledged before me on this day that, being informed of the contents of the above [*or, within*] conveyance, he [*or, they*] executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal this——day of——, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

I, A. B., notary public within and for said county, hereby certify that C. D., a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that E. F., the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand, etc.

WIFE'S SEPARATE ACKNOWLEDGMENT TO CONVEYANCE OF HOMESTEAD.

STATE OF —, }
County of —. } ss.

I, A. B., notary public in and for — county, —, hereby certify that, on the — day of —, A. D., 19—, came before me the within named —, known to me to be the wife of the within named —, who, being examined by me separate and apart from her husband, touching her signature to the foregoing instrument of writing, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

In witness whereof I hereunto set my hand and seal of office, on the day and year above written.

A. B., Notary Public.

Sec. 62.—Alaska—Form for acknowledgment.—

TERRITORY OF —, }
County of —. } ss.

This is to certify that on this — day of —, 19—, before me —, a notary public in and for the county and state aforesaid personally came —, to me personally known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein stated.

Witness my hand and seal of office, this — day of —, A. D. 19—.

My commission expires on the — day of —, 19—.

[SEAL.]

(Official Signature.)

A deed to property in Alaska, may be acknowledged in accordance with the forms of the state or territory where it is executed.

Sec. 63—Arizona forms.—

CERTIFICATE OF ACKNOWLEDGMENT OF SINGLE PERSON.

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public in and for said county, on this day personally appeared C. D., known to me [*or*, proved to me on the oath of E. F.] to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this—day of—, A D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF MARRIED WOMAN CONVEYING HOMESTEAD.

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public within and for said county, on this day personally appeared E. D., wife of C. D., known to me [*or*, proved to me on oath of E. F.] to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said E. D., acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand, etc.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public within and for said county, on this day personally appeared E. F., known to me [*or*, proved to me on the oath of G. H.] to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me, stated on oath that he saw C. D., the grantor or person who executed the foregoing instrument, subscribe the same [*or*, that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed], and that he had signed the same as a witness at the request of the grantor [*or person who executed the same*].

Given under my hand, etc.

Acknowledgment by corporation should show the official character of the officer executing the deed, and that he acknowledged it to be the act of the corporation.

Sec. 64.—California forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

On this—day of—, in the year A. D. 19—, before me, A. B., a notary public in and for said county, residing therein, and duly commissioned and sworn, personally appeared C. D., known to me [*or, proved to me on the oath of E. F.*] to be the person who is described in whose name is subscribed to and who executed the within instrument, and acknowledged to me that he executed the same.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

On this—day of—in the year one thousand nine hundred and—, before me, A. B., a notary public, in and for said county, residing therein and duly commissioned and sworn, personally appeared— known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he resides in the county of—, state of—that he was present and saw—who was personally known to him to be the same person described in, whose name is subscribed to and who executed said instrument as a party thereto, sign and execute the same; and that he, the affiant, then and there subscribed his name thereto as a witness.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the county of—, state of— the day and year, in this certificate, above written.

A. B., Notary Public.

Sec. 65.— Colorado forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public within and for the county and state aforesaid, do hereby certify that C. D. [*if wife joins, add, "and E. D., his*

wife"), who is [*or, are*] personally known to me [*or, proved to me by the oath of E. F., a credible witness*] to be the same person whose name [*or, names*] is [*or, are*] subscribed to the foregoing [*or, within*] instrument of writing as a party [*or, as parties*] thereto, appeared before me this day in person, and acknowledged that he [*she or they*] signed sealed and delivered the same, as his free and voluntary act, the same for the uses and purposes therein set forth.

Witness my hand and notarial seal, this ——day of——, A. D. 19—.

[SEAL.]

A. B., Notary Public.

AUTHENTICATION TO BE ANNEXED TO THE CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF ———, }
County of ———. } ss.

I, C. D., clerk of [*name of court*], a court of record of said county do hereby certify that A. B., whose name is subscribed to the foregoing certificate of acknowledgment [*or, proof*], was at the time of taking such acknowledgment [*or, proof*] a notary public in and for said county of ———, and duly authorized to take and certify acknowledgments [*or proofs of the execution*] of deeds of land in said state, by the laws thereof, that I am well acquainted with his handwriting and that the signature and seal to said certificate, purporting to be A. B.'s, are his true signature and seal.

Witness my hand, etc.

Sec. 66.—Connecticut form.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF ———, }
County of ———. } ss.

[*Name of town*],——, A. D. 19—.

Then and there before me, C. D., a notary public within and for the county and state aforesaid, duly commissioned and acting as such, personally appeared A. B. [*if wife joins, add, "and C. B., his wife"*], signer and sealor [*or, signers and sealors*] of the foregoing instrument and [*severally*] acknowledged the same to be his [*her or their*] free act and deed, before me.

Witness my hand and seal of office on this——day of——, A. D. 19—.

[SEAL].

D. E., Notary Public.

Sec. 67.—Delaware forms.—**CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.**

STATE OF —, }
 County of —. } ss.

Be it remembered, that on this—day of—, in the year of our Lord one thousand nine hundred —, personally came before the subscriber, G. H., a notary public within and for said county of —, A. B. and C. B., his wife, parties to this indenture [*or*, instrument], known to me personally [*or*, proved on the oath of E. F.] to be such, and severally acknowledged said indenture [*or*, instrument] to be their act and deed respectively, and that the said C. B., being at the same time privately examined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure.

Given under my hand and notarial seal the day and year aforesaid.

[SEAL.]

G. H., Notary Public.

Deed for a corporation should be executed by the president, and should state that he "acknowledged the said indenture to be his act and deed, and the act and deed of the said company; that the signature of the said president is his own proper handwriting; that the seal affixed is the common or corporate seal of said company; and that his act of sealing, executing and delivering said indenture was duly authorized by resolution of the directors (trustees or other managers) of said company."

Deeds require one witness.

Sec. 68.—District of Columbia forms.—**GENERAL FORM OF CERTIFICATE OF ACKNOWLEDGMENT.**

STATE OF —, }
 County of —. } ss.

I, A. B., a notary public in and for the county aforesaid in said state, do hereby certify that C. D., a party to a certain deed bearing date on the—day of—, A. D. 19—, and hereto annexed, personally appeared before me in the county aforesaid, the said C. D. being personally well known to me [*or*, proved by the oath of a credible witness before me] to be the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

FORM OF CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public in and for the county aforesaid in said state, do hereby certify that C. D. and E. F., his wife, parties to a certain deed bearing date on the—day of—, and hereto annexed, personally appeared before me, in the county aforesaid, the said C. D. and E. F. being personally known to me [or proved by the oaths of a credible witness *or* credible witnesses before me] to be the persons who executed the said deed, and the said C. D. acknowledged the same to be his act and deed; and the said E. F., wife of the said C. D., being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand, etc.

For form of certificate of clerk which should be attached to the notary's certificate of acknowledgment, see ante, sec. 65.

Sec. 69.—Florida forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

I—, a notary public in and for the county of—, state of—, do hereby certify that—and—, his wife, to me known and known to me to be the persons described in and who executed the foregoing deed, personally appeared before me this day and severally acknowledged to me that they executed the same, and the said—wife of the said—on private examination separate and apart from her said husband acknowledged to me that she executed the same freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from her said husband.

In witness whereof I have hereunto set my hand and affixed my official seal this—day of—, A. D. 19—.

Sec. 70.—Georgia forms.—

SINGLE ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

Before me—, a notary public in and for—county—, personally came—, known to me to be the individual whose signature is

affixed to the foregoing deed, who says that he executed the same for the purposes therein mentioned and acknowledges said instrument to be his true and lawful act.

Witness my hand and seal of office, this—day of—, A D. 19—,
[SEAL.] (Official Signature.)

CERTIFICATE TO WIFE'S ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

Before me—, a notary public in and for—county—on this day personally appeared—, wife of—, known to me to be the person whose name is subscribed to the foregoing instrument, and on private examination by me separate and apart from her husband, acknowledged and agreed that she of her free will and accord signed, sealed and delivered said conveyance for the purposes therein stated and with the intention thereby to renounce, give up and forever quit-claim—her rights of dower and thirds and all other interest of, in and to the lands therein described.

[SEAL.]

(Official Signature.)

There is no necessity of renunciation of dower, except where title to the land has been derived through the wife.

Sec. 71.—Idaho forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

On this—day of—, in the year of—, before me, A. B., a notary public within and for said county of—, personally appeared C. D., known to me [or, proved to me on the oath of E. F.] to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Given under my hand and official seal, the day and year above written.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me A. B., a notary public in and for the county of—, state of—, personally appeared

— known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Given under my hand and seal of office, on the day and year in this certificate above written.

A. B., Notary Public.

FORM FOR ATTORNEY IN FACT. (Caption as above.)

On this—day of—, A. D. 19—, before me,—a notary public in and for the county of—, state of—, personally appeared—, known to me to be the person whose name is subscribed to the within instrument, as attorney in fact for—, and acknowledged to me that he subscribed the name of—thereto as principal and his own name as attorney in fact.

Given under my hand and seal of office on the day and year in this certificate above written.

—Notary Public.

Sec. 72.—Illinois forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public within and for said county, do hereby certify that C. D. [*if acknowledged by wife also, add, and E. D., his wife*], personally known to me [*or, proved to me by the testimony on oath of G. H., a credible witness*] to be the same person [*or, persons*] whose name [*or, names is, or, are*] subscribed to the foregoing instrument as having executed the same, appeared before me this day in person, and acknowledged that he [*she or they*] signed, sealed and delivered the said instrument as his [*her or their*] free and voluntary act, for the uses and purposes therein set forth. [*If the deed releases or waives the right of homestead, add, "including the release and waiver of the right of homestead."*]

Given under my hand and notarial seal this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

Be it remembered that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, duly appointed and commissioned, personally appeared C. D., to me personally known [*or, who has been proved to me on the oath of E. F., a credible witness*] to

be a subscribing witness to the foregoing deed, who, after being duly sworn, according to law, deposeth and saith that G. H., whose name appears subscribed to said deed, is the real person who executed the same as grantor and that he, the said C. D., subscribed his name as a witness thereto in the presence and at the request of said G. H., which is sufficient evidence to me of the execution of said deed.

In witness whereof I have hereunto set my hand and seal at—, this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

Sec. 73.— Indiana forms.—

GENERAL FORM OF CERTIFICATE.

STATE OF —, }
County of —, } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, duly commissioned and qualified, personally appeared C. D. [*if wife joins in the acknowledgment, add, "and E. D., his wife"*], the grantor [*or, grantors*], in the foregoing deed, and acknowledged [*or, severally acknowledged*] the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY SUBSCRIBING WITNESS.

STATE OF —, }
County of —, } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, the undersigned A. B., a notary public within and for said county, personally appeared C. D., a subscribing witness to the execution of the within [*or, foregoing*] deed, of lawful age, who, being by me duly sworn, upon his oath did depose and say that on the—day of—, 19—, he saw the within named grantor [*or, grantors*], E. F. [*if the grantor's wife joined in the execution, add, "and G. F., his wife"*], sign, seal and deliver the within [*or, above*] deed, as his [*her or their*] act and deed; that this deponent at the same time signed his name as a witness to the execution of said deed, at the request and in the presence of said grantor [*or, grantors*], which grantor [*or, grantors*] was [*or, were*] at the time over the age of twenty-one years, and of sound mind and memory, and laboring under no disability so far as deponent knows.

In witness whereof, etc.

PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county—personally appeared—, a subscribing witness to the foregoing instrument, of lawful age, who being by me duly sworn, upon oath says that on the—day of—, A. D. 19—, he saw the within named grantors—and—, his wife, sign, seal and deliver the above deed, as their act and deed, that he at the same time at the request and in the presence of said grantors, signed the same as a subscribing witness. That the said grantors were at the time over the age of twenty-one years and were of sound mind and memory and laboring under no disability so far as deponent knows.

Witness my hand and seal of office this—day of—, A. D. 19—.
[SEAL.] (Official Signature.)

Sec. 74.—Iowa forms.—

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public in and for—county,—, on this—day of—, A. D. 19—, personally appeared—and—, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be his voluntary act and deed for the consideration and purposes therein expressed.

Witness my hand and seal of office this—day of—, A. D. 19—.
[SEAL.] (Official Signature.)

Sec. 75.—Kentucky forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public in and for said county, do certify that this instrument of writing from C. D. [*or*, C. D. and E. F.] was this day produced to me in my county by the party [*or*, parties], and was acknowledged by him [*or*, them] to be his [*or*, their] act and deed.

Given under my hand and seal of office, this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
 County of —. } ss.

I, A. B., a notary public in and for said county, do certify that this instrument of writing from C. D. and E. F., his wife, was this day produced to me in my county by the parties [*or*, party], and was acknowledged by the said C. D. to be his act and deed; and the contents and effect of the instrument being explained to the said E. F. by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand, etc.

CERTIFICATE OF PROOF BY SUBSCRIBING WITNESSES.

STATE OF —, }
 County of —. } ss.

I, A. B., a notary public in and for said county, do certify that this day came before me C. D. and E. F., the subscribing witnesses to the foregoing deed [*or other instrument*] by G. H. to I. J., which witnesses are personally known to me to be the same whose names are so written as witnesses, and being solemnly sworn by me in due manner, did severally declare on their oaths that the said G. H. did acknowledge this instrument to be his act and deed; that the signature thereto was made by him; that they knew him to be the same person who is named as the grantor therein;* and that they did subscribe said deed as witnesses by his request.

Given under my hand, etc.

CERTIFICATE OF PROOF BY ONE OF THE SUBSCRIBING WITNESSES.

From * proceed: that he knew I. J., the other person whose name appears subscribed to said deed as a witness; and that said I. J. and he, the said C. D., did subscribe said deed as witnesses in the presence of each other at said E. F.'s request.

Given under my hand, etc.

Sec. 76.—Louisiana forms.—

A conveyance of lands in Louisiana should be subscribed by the grantor in the presence of two attesting witnesses, over sixteen years of age, and a notary public. The statutes of Louisiana do not prescribe any special form for acknowledgment. The following is the form generally used in that state.

STATE OF —, }
County of —. } ss.

Before me the undersigned authority personally came and appeared—, to me personally known, who signed the foregoing document before me and in the presence of the two subscribing legal witnesses, and acknowledged to me, in the presence of said witnesses, that he had signed the above as his free and voluntary act and deed, for the uses and purposes therein set forth.

In faith whereof I have hereunto set my hand and seal of office this— day of—19—.

—, Notary Public.

In other cases the acknowledgment may be according to the law of the state in which the deed is executed. The official capacity of the officer taking the acknowledgment should be certified to by the secretary of the state, under the seal of the state, or by a commissioner for Louisiana. The form of certificate to be attached to the notary's may be substantially the same as that given ante, sec. 65.

Sec. 77.—Maine forms.—

The acknowledgment of a married woman is the same as that of an unmarried person. Where several persons have joined in the execution of a deed, the acknowledgment of one of them is sufficient.

FORM OF CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D. and E. D., his wife, the above named grantors, and acknowledged the foregoing instrument to be his [or, their] free act and deed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

If acknowledged by an agent of a corporation it should be: "the free act and deed of the said (corporation by name")

Sec. 78.—Maryland form.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
 County of —. } ss.

I hereby certify that on this—day of—, A. D. 19—, before me, A. B., notary public in and for said county, personally appeared C. D., and did [*or if his wife joins in the acknowledgment*, "C. D. and E. D., his wife, and did each severally"] acknowledge the foregoing [*or, within*] deed [*or other instrument*] to be his [*or, their*] act.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal the day and year above written.

[SEAL.]

A. B., Notary Public.

Sec. 79.—Massachusetts form.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
 County of —. } ss.

[*Name of town.*] Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared C. D. [*if wife joins in the acknowledgment*, add, "and E. D., his wife"] known to me to be the persons whose name [*or, names*] is [*or, are*] subscribed to the above [*or, foregoing*] instrument, and acknowledged the same to be his [*her or their*] free act and deed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

ACKNOWLEDGMENT BY ATTORNEY IN FACT.

STATE OF —, }
 County of —. } ss.

On this—day of—, 19—, before me personally appeared A. B., to me known to be the person who executed the foregoing instrument on behalf of C. D., and acknowledged to me that he executed the same as the free act and deed of said C. D.

(Conclusion and signature.)

Sec. 80.—Michigan form.—

FORM FOR ACKNOWLEDGMENT.

STATE OF —, }
 County of —. } ss.

On this—day of—, 19—, personally appeared before me —and —, known to me to be the persons who are described in,

and who executed, the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Acknowledgment by attorney in fact is the same as in sec. 79.

Sec. 81.—Minnesota forms.—

STATE OF —, }
County of —. } ss.

Be it known that on this—day of—, A. D.—, personally appeared before me—, a notary public in and for—county,—, and—, known to me to be the individual persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

Witness my hand and seal of office this—day of—, A. D. 19—.
[SEAL.] (Official Signature.)

Sec. 82.—Mississippi forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

Personally appeared before me, A. B., a notary public, in and for said county, the within named A. B. [and C. B., his wife], who acknowledged that he [they] signed, sealed and delivered the foregoing deed [*or other instrument, as the case may be*], on the day and year therein mentioned, as his [their] free act and deed.

Given under my hand and notarial seal this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY SUBSCRIBING WITNESSES.

STATE OF —, }
County of —. } ss.

Personally appeared before me, A. B., a notary public, in and for said county, the within named C. D., one of the subscribing witnesses to the foregoing deed [*or other instrument*], who, being first duly sworn, deposeth and saith that he saw the within [*or, above*] named E. F., whose name is subscribed to said instrument sign, seal and deliver the same to G. H., therein named as grantee, [*or, that he heard the said E. F. acknowledge that he signed, sealed and delivered the same to G. H., the grantee therein named*]; that he this deponent, subscribed his name as a witness thereto in the presence and at the request of the said E. F., and that he saw the other subscribing witness [*or, witnesses*],

I. J. [*if there are others, name them*], sign the same in the presence and at the request of said E. F., and that the witnesses signed in the presence of each other, on the day and year therein mentioned.

Given under my hand, etc.

A deed by a corporation should contain a power authorizing some one named therein to acknowledge it before the proper officer as the act of the corporation.

Sec. 83.—Montana forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

On this—day of—, in the year of—, before me, a notary public in and for—county—, personally appeared—, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, on the day and year above written.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY AN ATTORNEY IN FACT.

STATE OF —, }
County of —. } ss.

On this—day of—, in the year of—, before me A. B., a notary public, in and for—county, state of—, personally appeared —, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of—, and acknowledged to me that he subscribed the name of—, thereto as principal, and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year above written.

[SEAL.]

A. B., Notary Public.

When acknowledged by a corporation, the certificate should show that the person acknowledging the same was known to the notary to be the officer he purported to be, and that the corporation executed the instrument.

Sec. 84.—Nebraska forms.—

Acknowledgments and proofs of conveyances to lands in Nebraska, may conform to the laws of Nebraska, or to the laws of the state in which they are taken.

FORM FOR ACKNOWLEDGMENT IN NEBRASKA.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me, A. B., a notary public in and for the county of—, state of—, personally appeared C. D., and E. D., his wife, both to me personally known, to be the identical persons who are described in and whose names are affixed to, the foregoing instrument, as grantors, and they severally acknowledged the same to be their free and voluntary act and deed.

In testimony whereof, I have hereunto set my hand and official seal at— in said county and state on the day and year last above written.

[SEAL.]

A. B., Notary Public.

Sec. 85.—Nevada form.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D., whose name is subscribed to the above [within *or* annexed] instrument as a party thereto, personally known to me [*or*, satisfactorily proved to me by the oath of E. F., a competent and credible witness for that purpose by me duly sworn] to be the individual described in and who executed the said instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D. and E. D., his wife, whose names are subscribed to the above [within *or* annexed] instrument as parties thereto, and who are personally known to me [*or*, satisfactorily proved, *etc.*, *as above*] to be the individuals described in and who executed said instrument as parties thereto, and severally acknowledged to me that they, each of them, respectively executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

And the said E. D., wife of the said C. D., having been by me first made acquainted with the contents of said instrument, acknowledged to me, on examination apart from and without the hearing of her said husband, that she executed said instrument freely and voluntarily, without fear or compulsion or undue influence of her said husband, and that she did not wish to retract the execution of the same.

In witness whereof, etc.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

On this——day of——, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D., personally known to me [*or, satisfactorily proved, etc., as above*] to be the same C. D. whose name is subscribed as an attesting witness to the above [*within or annexed*] instrument, who being by me first duly sworn, on his oath said that he was personally acquainted with E. F., whose name is subscribed to said instrument as a party; that he saw said E. F. sign, seal and deliver said instrument to G. H., the grantee therein named and that he, the said C. D., subscribed his name as an attesting witness thereto at said E. F.'s request.

In witness whereof, etc.

Sec. 86.—New Hampshire form.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

Personally appeared the above named A. B. [*if the acknowledgment is by husband and wife, add, and "C. B., his wife"*], and acknowledged the foregoing instrument to be his [*her or their*] voluntary act and deed.

Before me this——day of——, A. D. 19—.

D. E., Notary Public in and for said County of——.

Sec. 87.—New Jersey forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this ——day of——, A. D. 19—, before me, the subscriber, A. B., a notary public in and for said county, personally appeared C. D., who I am satisfied is the grantor named in and who executed the above [*or, within*] instrument of conveyance, and I having first made known to him [*or, her*] the contents thereof, he [*or, she*] did thereupon acknowledge before me that he [*or, she*] signed,

sealed and delivered the same as his [*or, her*] voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and notarial seal the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF ———, }
County of ———. } ss.

Be it remembered, that on this——day of——, A. D. 19——, before me, the subscriber, A. B., a notary public, in and for said county, personally appeared C. D.* and E. D., his wife, who I am satisfied are the grantors named in and who executed the within instrument of conveyance, and I having first made known to them the contents thereof, they did thereupon severally acknowledge before me that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said E. D., wife of the said C. D., being by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely and without any fear, threat or compulsion of or from her said husband.

In witness whereof, etc.

For corporation insert at *:

To me known, who, being by me duly sworn according to law, on his oath doth depose and say that he is the secretary [*or other officer*] of [*the corporation*] the grantors in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said [*corporation*]; that it was so affixed by order of the said [*corporation*]; that—— ——— is the president [*or other executive officer*] of the said [*corporation*]; that he saw the said—— ———, as such——, sign the said deed, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said [*corporation*], by their order, and that this deponent signed his name thereto at the same time as a subscribing witness.

Sworn and subscribed before me, etc.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF ———, }
County of ———. } ss.

Be it remembered, that on this——day of——, A. D. 19——, personally appeared before the subscriber, A. B., a notary public in and for said county, C. D., who, being by me duly sworn according to law on his oath saith that he saw E. F., the within named grantor, sign, seal

and deliver the within indenture as his voluntary act and deed, and that he, the said C. D., subscribed his name to the same at the same time as an attesting witness. C. D.

Taken, sworn and subscribed before me, this—day of—, A. D. 19—. In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

For form of authentication, which should be attached to the certificate of acknowledgment, see ante, sec. 65.

The signature of the wife cannot be proven by a witness. She must acknowledge it before the officer himself.

Sec. 88.—New Mexico forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared C. D. [and E. D., his wife], to me known * [or, satisfactorily proved on the testimony of F. G. and H. I.] to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[SEAL.]

A. B., Notary Public.

Certificate of authentication as per form and 65 should be attached.

For corporations, continue from *:

Who, being by me duly sworn, did say that he is the president [*or other officer*] of [*name of corporation*]; that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. D. acknowledged said instrument to be the free act and deed of said corporation.

Sec. 89.—New York forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

On this—day of—, in the year A. D. 19—, before me personally came A. B. [*if wife joins in the acknowledgment, add, "and C. B., his wife"*], to me personally known [*or, satisfactorily proved to me by*

the oath of D. E., a competent and credible witness, residing at—, for that purpose by me duly sworn] to be the individual [*or*, individuals] described in and who executed the within [*or*, above, *or*, annexed] conveyance [*or*, instrument], and acknowledged [*or*, severally acknowledged] that he [she *or* they severally] executed the same for the purposes therein mentioned.

[SEAL.] A. B., Notary Public in and for said County of—.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally came C. D., subscribing witness to the within [*or*, above, *or*, annexed] conveyance [*or*, instrument], with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of—; that he was acquainted with E. F., and knew him to be the person described in and who executed the said conveyance [*or*, instrument], and that he saw him execute and deliver the same, and that he acknowledged to him, the said C. D., that he executed and delivered the same, and that he, the said C. D., thereupon subscribed his name as a witness thereto.

Witness my hand, etc.

For form for authenticity to be annexed to notaries' certificate, see ante, sec. 65.

Sec. 90.—North Carolina forms.—

CERTIFICATE OF ACKNOWLEDGMENT—ORDINARY FORM.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public within and for said county of—, do hereby certify that C. D. personally appeared before me this day and acknowledged the due execution of the foregoing deed of conveyance.

Witness my hand and notarial seal, this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

I, A. B., notary public within and for said county of—, do hereby certify that this day personally appeared before me, C. D. and E. D., his wife, and acknowledged the due execution of the foregoing [*or*, within] deed of conveyance [*or other instrument*]. and the said E. D.,

being by me privately examined separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto, and that she hereby relinquishes her right of dower in the land.

Witness my hand and notarial seal, this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

Add certificate of authentication, as in sec. 65.

Sec. 91.—North Dakota forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared C. D. [*or*, C. D. and E. D. his wife], well known to me [*or*, proved to me on the oath of G. H.], to be the person who is [*or*, persons who are] described in and who executed the within instrument, and duly acknowledged to me that he [*or*, they] executed the same.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY CORPORATION.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D., 19—, before me A. B., a notary public in and for said county, appeared C. D., personally known to me [*or*, proved to me on the oath of E. F.] to be the* president [*or*, the secretary] of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

[SEAL.]

A. B., Notary Public.

FORM FOR ATTORNEY IN FACT.

*From this point conclude: "person who is described in and whose name is subscribed to the within instrument as the attorney in fact of I. J., and acknowledged to me that he subscribed the name of I. J. thereto as principal, and his own name as attorney in fact."

[SEAL.]

A. B., Notary Public.

For form of certificate of proof by a subscribing witness or a party, see ante, sec. 64.

Sec. 92.—Ohio forms.—**CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.**

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, the subscriber, a notary public in and for said county, personally came A. B., and acknowledged the execution of the foregoing instrument to be his [or, her] free and voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

[SEAL.]

C. D., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, the subscriber, a notary public in and for said county, personally came A. B. and C. B., his wife, and acknowledged the execution of the foregoing instrument to be their free and voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, etc.

The attestation of two subscribing witnesses is required. Instruments conveying lands in Ohio may also be acknowledged or proved in accordance with the laws of the place where they are executed.

Sec. 93.—Oregon forms.—

Acknowledgments of deeds conveying lands in Oregon should conform to the law of the state in which they are taken. In addition to the certificate of acknowledgment, a certificate of the clerk, or other proper certifying officer, of a court of record of the county within which such acknowledgment is taken, in form substantially as follows, should be attached to the deed.

STATE OF —, }
County of —. } ss.

I, A. B., clerk of the—court of said county, a court of record, do hereby certify that C. D., whose name is subscribed to the foregoing certificate of acknowledgment, was, at the time of taking such acknowl-

edgment, a notary public in and for said county, and authorized to take and certify the same by the laws of said state of—; that the same is taken and certified in all respects as required by the laws of said state; and that I am well acquainted with the handwriting of said C. D., and believe that the signature purporting to be his, attached to said certificate, is genuine. And I further certify that the foregoing deed is executed according to the laws of said state.

Witness my hand and official seal this—day of—, A. D. 19—.

[SEAL.]

A. B. [*style of office*].

Sec. 94.—Pennsylvania forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —. }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public duly commissioned in and for said county, came C. D., and acknowledged the foregoing indenture to be his act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public duly commissioned in and for said county, came C. D. and E. D., his wife, and acknowledged the foregoing indenture to be their act and deed, and desired the same to be recorded as such. She, the said E. D., being of lawful age, and by me examined separate and apart from her said husband, and the contents of said deed being by me first fully made known to her, did thereupon declare that she did voluntarily and of her own free will and accord sign and seal, and as her act and deed deliver, the same without any coercion or compulsion of her said husband.

Witness my hand, etc.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public duly commissioned in and for said county,

personally appeared C. D., * one of the subscribing witnesses to the execution of the above deed, who, being duly sworn [or, affirmed] according to law, doth depose and say that he did see E. F., the grantor whose name is subscribed to said deed, sign and seal, and as his act and deed deliver, the same for the uses and purposes therein mentioned; and that he did also see G. H. subscribe his name thereunto as the other witness of such sealing and delivery; and that the name of this deponent thereunto set and subscribed as a witness is of this deponent's own proper handwriting.

C. D.

Sworn [or, affirmed] to and subscribed before me the day and year aforesaid.

Witness my hand and notarial seal.

[SEAL.]

A. B., Notary Public.

For corporation after * continue.

Who being duly sworn according to law, doth depose and say that he was personally present and did see the common or corporate seal of the above named [name of corporation] affixed to the foregoing indenture or deed poll; that the seal so affixed is the common or corporate seal of the said [corporation], and was so affixed by the authority of the said corporation as the act and deed thereof; that the above-named C. D. is president of said corporation, and did sign the said indenture or deed poll as such in the presence of this deponent; that this deponent is the secretary of the said corporation, and that the name of this deponent above signed in attestation of the due execution of said indenture or deed poll is of this deponent's own proper handwriting.

Sworn to and subscribed, etc.

[Signature of officer.]

Certificate of authentication as in section 65 should be added.

Sec. 95.—Rhode Island forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared the above named grantor, C. D., known to me and known by me, to be the grantor executing the foregoing instrument and acknowledged the said, instrument by him [or, her] signed, to be his [or, her] free and voluntary act and deed.

In witness whereof, I have set my hand and notarial seal at—, the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF —, }
County of —. } ss.

Be it remembered, that on this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared C. D. and E. D., his wife, and the said C. D. acknowledged the foregoing instrument by him signed to be his free and voluntary act and deed, and the said E. D., being by me examined privily and apart from her said husband, and having said instrument shown and explained to her by me, declared to me that it was her voluntary act, and that she did not wish to retract the same.

In witness whereof, etc.

Sec. 96.—South Carolina forms.—

In cases where the execution of a conveyance of property in South Carolina is proved or acknowledged before a notary, his certificate should be accompanied by a certificate as to his official character, attested by a clerk of a court of record of the county in which he may reside. The certificate of such clerk may be in the following form, viz.:

STATE OF —, }
County of —. } ss.

I, A. B., clerk of [*name of court*], a court of record of said county, do hereby certify that C. D., whose name is subscribed to the foregoing certificate of proof [*or*, renunciation of dower], is and was at the time of taking such proof [*or*, renunciation of dower] and certifying thereto a notary public within and for said county, duly commissioned and qualified; that I know the signature of the said C. D., and that the signature to said certificate purporting to be his is genuine.

Given under my hand and official seal [*if he has a seal*], this — day of—, A. D. 19.—

[SEAL.] A. B., Clerk of the—Court of—.

CERTIFICATE OF RENUNCIATION OF DOWER.

STATE OF —, }
County of —. } s.

I, F. G., notary public within and for said county, do hereby certify unto all whom it may concern, that E. B., the wife of the within named A. B., did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or

persons whomsoever, renounce, release and forever relinquish unto the within named C. D., his heirs and assigns, all her interest and estate, and also her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

[Signed.]

E. B.

Given under my hand and notarial seal, this—day of—, A. D.

19—.

[SEAL.]

F. G., Notary Public.

Except in the case of renunciation of dower by a married woman, proof by a subscribing witness is required by the laws of South Carolina to entitle an instrument to be recorded in place of the ordinary acknowledgment required in most states. The certificate of proof may be in the following form:

STATE OF —, }
County of —, } ss.

Personally appeared before me A. B., and made oath that he saw C. D. sign, seal and deliver as his act and deed the within conveyance, for the uses and purposes therein mentioned, and that he, with E. F., in the presence of each other, witnessed the due execution thereof, and subscribed their names as witnesses thereto at the request of the said C. D.

[Signed.]

A. B.

Subscribed and sworn to before me, this—day of—, A. D.

19—.

[SEAL.]

G. H.,

Notary Public within and for said County of—.

Sec. 97.—South Dakota forms.—

CERTIFICATE SINGLE FORM.

STATE OF —, }
County of —, } ss.

Before me, —, a notary public in and for —, county, — on this day personally appeared — known to me (or, proven to me on the oath of —, who is known to me to be a credible person) to be the person who is described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

Witness my hand and seal of office this—day of—, A. D.

19—.

[SEAL.]

(Official Signature).

No privity examination of wife required. Above form is sufficient for a married woman.

CERTIFICATE FOR CORPORATION.

See sec. 49.

STATE OF —, }
 County of —. } ss.

Before me, —, a notary public in and for — county, —, on this day personally appeared —; known to me [*or*, proven to me on the oath of —], to be the president [*or*, secretary] of the corporation described in the foregoing instrument and who executed the same, and acknowledged such instrument to be the free act and deed of such corporation.

Given under my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature).

Sec. 98.—Tennessee forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
 County of —. } ss.

Before me, A. B., a notary public in and for said county, personally appeared C. D., the within named bargainer [*or other name*], with whom I am personally acquainted, and who acknowledged that he executed the within deed [*or other instrument*] for the purposes therein contained.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF PROOF BY SUBSCRIBING WITNESSES.

STATE OF —, }
 County of —. } ss.

Before me, A. B., a notary public in and for said county, appeared C. D. and E. F., subscribing witnesses to the within deed [*or other instrument*], who, being first duly sworn [*or, affirmed*], deposed and said that they are acquainted with G. H., the bargainer [*or as the name may be*], and that he acknowledged the same in their presence to be his act and deed on the day it bears date [*or stating the time as proved by the witnesses*].

Witness my hand and notarial seal, at my office, this — day of —, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE TO A

DEED CONVEYING THE WIFE'S SEPARATE PROPERTY.

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public in and for—county,—, on this day personally appeared—and—, his wife, the within [or, above] named grantors, with both of whom I am personally acquainted and acknowledged to me that they executed the same for the purposes therein contained, and the said—having appeared before me privily and apart from her said husband, acknowledged that she executed said deed freely, voluntarily, and understandingly, without compulsion or constraint upon the part of her said husband and for the purposes and consideration therein expressed.

Witness my hand and seal of office, this—day of—, A. D. 19—.

[SEAL.]

(Official Signature).

Sec. 99.—Utah forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A GRANTOR WHO IS KNOWN.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D. [*if wife joins, add, "and E. D., his wife"*], personally known to me [*or, satisfactorily proven to me on the oath of G. H., a competent and credible witness, for that purpose by me duly sworn*] to be the person [*or, persons*] described in and who executed the foregoing instrument, and who (a) acknowledged to me that he [*she or they*] executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.

[SEAL.]

A. B., Notary Public.

FORM OF CERTIFICATE WHERE THE GRANTOR IS UNKNOWN.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, personally appeared before me, A. B., a notary public in and for said county, C. D. [*if wife joins, add, "and E. D., his wife"*], satisfactorily proved to me to be the person [*or persons*] described in and who executed the within [*or, annexed*] conveyance, by the oath of E. F., a competent and credible witness for that purpose by me duly sworn, and [*conclude as in preceding form from the point therein marked (a)*].

CERTIFICATE OF PROOF BY A SUBSCRIBING WITNESS.

STATE OF —, }
County of —. } ss.

On this—day of—, A. D. 19—, before me, A. B., a notary public in and for said county, personally appeared C. D., personally known to me [*or*, satisfactorily proved to me by the oath of E. F., a competent and credible witness for that purpose by me duly sworn] to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in the county of—and state of—; that he was present and saw G. H., personally known to him as the same person described in and who executed the annexed instrument as a party thereto, sign, seal and deliver the same, and heard him acknowledge that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said G. H.

In witness, etc.

Sec. 100.—Vermont forms.—

FORM OF CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

At—, this—day of—, A. D. 19—, personally appeared A. B. [*if wife joins in the acknowledgment, add, "and C. B., his wife"*], the signer and sealer [*or*, signers and sealers] of the above written instrument, and acknowledged the same to be his [*her or their*] free act and deed.

Before me,

D. E., Notary Public in and for said County of—.

Two subscribing witnesses are required.

Sec. 101.—Virginia forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public of the county aforesaid, in the state of—, do certify that C. D. [*or*, C. D. and E. F.], whose name [*or*, names] is [*or*, are] signed to the writing above [*within or hereto annexed*], bearing

date on the——day of——, A D. 19—, has [*or, have*] acknowledged the same before me, in my county aforesaid.

Given under my hand and notarial seal, the day and year above written.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY A MARRIED WOMAN.

STATE OF ——, }
County of ——, } ss.

I, A. B., a notary public of the county aforesaid, in the state of——, do certify that C. D., the wife of E. D., whose name is signed to the writing above [*within or hereto annexed*], bearing date on the——day of ——, personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said C. D., acknowledged the said writing to be her act, and declared that she had willingly executed the same, and did not wish to retract it.

Given under my hand, etc.

CERTIFICATE OF ACKNOWLEDGMENT BY HUSBAND AND WIFE.

STATE OF ——, }
County of ——, } ss.

I, A. B., a notary public of the county aforesaid, in the state of——, do certify that C. D. and E. D., his wife, whose names are signed to the above [*within or annexed*] instrument, bearing date on the——day of ——, 19—, personally appeared before me in the county aforesaid, and said C. D. acknowledged said instrument to be his act and deed. And the said E. D., being examined by me privily and apart from her said husband, and having the instrument aforesaid fully explained to her, acknowledged said instrument to be her act and deed, and declared that she had willingly executed the same, and did not wish to retract it.

Given under my hand, etc.

Sec. 102.—Washington form.—

STATE OF ——, }
County of ——, } ss.

I, A. B., a notary public in and for the county of——, state of——, do hereby certify that on this——day of——, 19—, personally appeared before me,——and——his wife, to me known to be the individuals described in and who executed the foregoing instrument, and

acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal on the day and year in this certificate above written.

A. B., Notary Public.

Sec. 103.—West Virginia forms.—

CERTIFICATE OF ACKNOWLEDGMENT BY A MAN OR AN UNMARRIED WOMAN.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public in and for said county, do certify that C. D. [*or*, C. D., E. F. and G. H.], whose name [*or*, names] is [*or*, are] signed to the writing above [within *or* hereto annexed], bearing date on the—day of—A. D. 19—, has [*or*, have] this day personally appeared before me in the state and county aforesaid and acknowledged the same before me to be his [*or*, their] act and deed.

Given under my hand and notarial seal, this—day of—, A. D. 19—.

[SEAL.]

A. B., Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT BY A MARRIED WOMAN.

STATE OF —, }
County of —. } ss.

I, A. B., a notary public in and for said county, do certify that C. D. the wife of E. D., whose name is signed to the writing above [within *or* hereto annexed], bearing date on the—day of—, personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband, and having the said writing by me fully explained to her, she, the said C. D., acknowledged the said writing to be her act, and declared that she had willingly executed the same, and did not wish to retract it.

Given under my hand, etc.

Deed for corporation may be the same as sec. 53.

Sec. 104.—Wisconsin forms.—

CERTIFICATE OF ACKNOWLEDGMENT.

STATE OF —, }
County of —. } ss.

Personally came before me this—day of—, 19—, the within named C. D. and his wife, E. D., to me known to be the persons who executed the foregoing instrument, and acknowledged to me that they executed the same.

A. B., Notary Public.

Sec. 105.—Wyoming forms.—

A mortgage or conveyance of land situated in Wyoming should be acknowledged according to the laws of the state in which it is executed, if the instrument is a conveyance or mortgage of the homestead the wife should be examined separate and apart from the husband. and a notary's certificate should have attached thereto a certificate of the clerk, or other certifying officer, of a court of record of the county within which the acknowledgment is taken, substantially in the form given ante, sec. 65.

The statutes of Wyoming do not prescribe a form of acknowledgment to a mortgage or conveyance of the homestead but the following form fulfills the requirements of the statute.

STATE OF —, }
County of —. } ss.

Before me, A. B., a notary public in and for——county, state of ——, on this day personally appeared——and——his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged the same to be their free act and deed; and the said——wife of the said——, having been examined by me privily and apart from her said husband, and having said instrument by me fully explained to her, and having been by me apprised of her rights and of the effect of said instrument, acknowledged and declared the same to be her free and voluntary act and deed.

Witness my hand and seal of office this——day of——, A. D. 19—.

A. B., Notary Public.

CHAPTER VI.

AFFIDAVITS AND OATHS.

Sec.		Sec.	
106.	Affidavit defined.	118.	Affidavit for an estray.
107.	Who may make affidavits.	119.	Affidavit of owner of estray
108.	Requisites of.	120.	Affidavit to enforce laborers' lien.
109.	Oath defined.	121.	Affidavit to secure mechanics' lien.
110.	Affirmation.	122.	Lien filed within what time.
111.	Requisites and manner of administering oath.	123.	Affidavit to an account in Arkansas.
112.	Form for affidavit.	124.	Affidavit to account in Kansas.
113.	Form of oath to written statement.	125.	Affidavit to account in Missouri.
114.	Form of oath of witness—of stenographer.	126.	Affidavit to account in Texas.
115.	Form of affidavit made by agent.		
116.	Affidavit by foreigner.		
117.	Affidavit to claim against estate of deceased person.		

Sec. 106.—Affidavit defined.—

An affidavit is a written statement or declaration voluntarily made and sworn or affirmed to by the declarant before some officer authorized to administer oaths.¹

1. Bouvier's Law Dict. "Affidavit," Anderson's Law Dict. same title, Norman v. Hom, 36 Mo. App. 419; Barhydt v. Alaxander, 59 Mo. App. 188; Shelton v. Berry, 19 Tex. 154, 7 Am. Dec. 326; Morris v. State, 2 Tex. Cr. App. 503; Bently v. Finney, 43 Neb. 794, 62 N. W. 213; Soule v. Chance, 1 Robt. (N. Y.) 222; Grove v. Campbell, 17 Tenn. (Yerger) 19

It has been held in some jurisdictions that a person may be compelled to make an affidavit, as to facts within his knowledge. Huston v. Vail, 51 Ind. 299; State v. Seaton, 61 Iowa, 563, 16 N. W. 736.

In Arkansas, Kansas and Oklahoma an affidavit is defined by statute to be,

“A written declaration under oath made without notice to the adverse party.” (Kirby’s Dig. Ark. sec. 3147, G. S. Kan. sec. 5942, R. L. Okla. sec. 5861.)

Sec. 107.—Who may make affidavits.—

The statutes of the different states, usually require that affidavits made in the prosecution or defense of pending suits be made by a party or his agent or attorney, under such statutes no one else is competent to make affidavits relative to pending litigation.² But affidavits, aside from pending suits, may be made by anyone who is competent to testify, and has knowledge of the facts stated in the affidavit.³

2. *Squires v. Chillicothe*, 89 Mo. 226, 1 S. W. 23; *Norvell v. Porter*, 62 Mo. 309; *Huthsing v. Moss*, 36 Mo. 101; *Davis v. Lumbe. Co.*, 2 Colo. App. 381, 31 P. 187; *Hadden v. Larned*, 83 Ga. 636, 10 S. E. 278; *Shattuck v. Myers*, 13 Ind. 46, 74 Am. Dec. 236; *Western Bank v. Tallman*, 15 Wis. 92.

When the statute requires that an affidavit be made by a party or his attorney, such affidavit can not be made by an agent of such party, who is not his attorney. In *Re Heath*, 40 Kan. 333, 19 P. 926.

When the statute requires an affidavit to be made by a party to a suit, it is not competent for his attorney in fact to make it for him. *Bryant v. Harding*, 29 Mo. 347.

Unless specially provided by statute, that such affidavit must be made by a party to the suit, the agent or attorney of a party may make any affidavit in regard to the suit, if he is acquainted with the facts. *Norvell v. Porter*, 62 Mo. 309; *Doll v. Mundine*, 84 Tex. 315, 19 S. W. 33; *Will v. Lytle*, Cr. W. Co., 100 Cal. 344, 34 P. 830.

3. Person making affidavit must be competent to testify. *Rivers v. State*, 10 Tex. App. 179; *Perez v. State*, 10 Tex. App. 329. In New York, it has been held, that a person convicted of felony can not make an affidavit for his discharge in insolvency. *People v. Robertson*, 26 How. 90. In North Carolina, it has been held, that although a man is “infamous” he can make a necessary affidavit in furtherance of the cause in which he is engaged. *Ritter v. Stutts*, 43 N. C. 240. Affiant must know the facts contained in the affidavit. *Wilson v.*

Sec. 108.—Affidavit, requisites of.—

An affidavit should show the state and county in which it was made,⁴ the name of the person making it.⁵ It should state facts and not conclusions or opinions and should state them certainly and not in the alternative.⁶ If affiant makes the affidavit on information gained from others, or from letters or documents, the affidavit should set out the information thus gained, and, when gained from letters or documents, they should be copied in the affidavit or set out as exhibits thereto.⁷

Me-Ne-Ches, 40 Kansas 648, 20 P. 468; *Shelton v. Berry*, 19 Tex. 154, 70 Am. Dec. 326; *Widner v. Hunt*, 4 Iowa, 357; *Sloane v. Anderson*, 57 Wis. 123, 13 N. W. 684.

4. *Barhydt v. Alaxander*, 59 Mo. App. 188; *Shelton v. Berry*, 19 Tex. 154; *Crist v. Parks*, 19 Tex. 234; *Blair v. West Point Mfg. Co.*, 7 Neb. 149; *Cook v. Staats*, 18 Barb. (N. Y.) 407; *Smith v. Richardson*, 1 Utah, 194; *Burns v. Doyle*, 28 Wis. 460. Courts of some of the states, in the absence of proof to the contrary, presume that an officer acted within his jurisdiction. *Baker v. Agricultural Land Co.*, (Kan.) 61 P. 412; *Reavis v. Cowell*, 56 Cal. 588; *Stone v. Williamson*, 17 Ill. App. 175; *Young v. Young*, 18 Minn. 90; *Benson v. Bennett*, 25 N. J. L. 166; *State v. Henning*, 3 S. D. 492, 54 N. W. 536; *Ormsby v. Ottoman*, 85 Fed. 492. A judgment is not subject to collateral attack because the affidavit upon which it is based failed to state the venue. *Avery v. Good*, 114 Mo. 290, 21 S. W. 815.

5. It is much the better practice, but not absolutely essential, that affiants name appear in the body of the affidavit. *Torrens v. Hicks*, 32 Mich. 307; *Davidson v. Bordeaux*, 15 Mont. 245, 38 P. 1075; *People v. Southerland*, 81 N. Y. 1.

6. Facts should be stated directly and positively. *City Nat. Bank v. Flippen*, 66 Tex. 610, 1 S. W. 897; *Nebraska M. Plow Co. v. Fuehring*, 52 Nebr. 541, 72 N. W. 1003; *Whitlock v. Roth*, 10 Barb. (N. Y.) 78. Should not state facts in the alternative. *Billings v. Noble*, 75 Wis. 325, 43 N. W. 1131. An affidavit should not state legal conclusions. *Pemberton v. Hoosier*, 1 Kan. 108; *State v. City of Parsons*, (Kan.) 95 P. 391; *Moore v. Thompson*, 138 Cal. 23, 70 P. 930; *Baker v. Akerman*, 77 Ga. 89; *Hodgman v. Barker*, 60 Hun (N. Y.), 156; *Wallace v. Chicago Stove Co.*, 46 Ill. 571.

7. An affidavit which shows that it is made on information and belief is in sufficient. *Pelegrielli v. McCloud etc. Co.*, 1 Cal.

It should be signed by the person making it⁸ and should be dated, certified to and signed officially by the officer before whom it is made.⁹

App. 593, 82 P. 695; *Moore v. Thompson*, 138 Cal. 23, 70 P. 930. An affidavit that shows on its face that affiant could not, of his own knowledge, know the truth of the statements therein contained may be entirely disregarded. *Cook v. De La Garza*, 13 Tex. 431. Affidavit should show the sources of affiant's information. *Harris v. Taylor*, 35 N. Y. App. 462; *Whitlock v. Roth*, 10 Barb. (N. Y.) 78. It should show why a positive affidavit could not be obtained. *Stuben Bank v. Alberger*, 78 N. Y. 252. Letters and documents should be set out or exhibited. *Moor v. Becker*, 13 N. Y. St. 567; *Thompson v. Best*, 4 N. Y. Supp. 229.

8. *Hargadine v. Van Horn*, 72 Mo. 370; *Sedalia etc. Bank v. Garton*, 40 Mo. App. 113; *Norman v. Horn*, 36 Mo. App. 419; *Lynn v. Morse*, 76 Iowa, 665, 39 N. W. 203; *Crenshaw v. Taylor*, 70 Iowa, 386, 30 N. W. 647. It has been held in Arkansas, and some other states, that if it clearly appears, in the body of the affidavit who made it, it is sufficient, without affiant's signature. *Mahan v. Owen*, 23 Ark. 347; *Winekoop v. Grand Travers C. J.*, 113 Mich. 381, 71 N. W. 640; *Norton v. Hange*, 47 Minn. 405, 50 N. W. 368. In Texas, the statute requires that an affidavit must be signed by the person making it, and without such signature it is a nullity. *Sayles' Civ. Stats.* art. 6; *Gordon v. State*, 29 Tex. Cr. App. 410, 16 S. W. 337. Signature below the jurat of the officer is sufficient, *Kohn v. Washer*, 69 Tex. 67.

9. The certificate usually called the jurat is essential not as a part of the affidavit, but as official evidence that the oath was legally made before a proper officer. *State Bank v. Hinchcliffe*, 4 Ark. 444; *Morris v. State*, 2 Tex. App. 502; *Gordon v. State*, 29 Tex. App. 410 16 S. W. 337; *Cantwell v. State*, 27 Ind. 505; *McDermaid v. Russell*, 41 Ill. 490; *Crenshaw v. Taylor*, 70 Iowa, 386, 30 N. W. 647; *Metcalf v. Prescott*, 10 Mont. 283, 25 P. 1037; *Consort v. Smith*, 36 W. V. 788, 15 S. E. 977. "Subscribed and sworn to before me this— day of— A. D.—" with the official signature of the officer is sufficient. *Pallidy v. Beatty*, 15 Okla. 626, 83 P. 428. The certificate should contain the words, "before me," *Smart v. Howe*, 3 Mich. 590; *Jackson v. Gumaer*, 2 Cow. (N. Y.) 552. When several persons sign an affidavit it is not necessary to show that they severally swore to the contents. *Randall v. Baker*, 20 N. H. 335. But when several sign and some are sworn and some affirm, the certificate should show

Sec. 109.—Oath defined.—

An oath is a pledge given by the person making it that his attestation or promise is made under an immediate sense of his responsibility to God. It is a solemn affirmation, strengthened by the parties invoking the divine vengeance in case he speaks falsely.¹⁰ In Kansas, it has been defined as, "a declaration or promise made by calling on God to witness what is said."¹¹ In Ohio, it has been defined as, "the calling upon God to witness that what is said by the person sworn is true and invoking the divine vengeance upon his head if what he says is false."¹² In England it has been defined as "a religious asseveration by which a person renounces the mercy and imprecates the vengeance of heaven if he do not speak the truth."¹³

Sec. 110.—Affirmations.—

The statutes of all the states provide that persons conscientiously opposed to swearing, or taking an oath, may affirm and shall be subject to the pains and penalties of perjury as in case of swearing, and when a person shall be required to take an oath it shall be lawful for the court or officer administering the same to permit the person to make an affirmation. The form is usually: "You do solemnly, sincerely and truly declare and affirm."¹⁴ It is not necessary for the officer in his certificate to an affirmation to state that

which were sworn and which affirmed. *State v. Browning*, 27 N. J. L. 536.

10. Am. and Eng. Ency. of Law, vol. 16, p. 1018; Bouv. Law Dict., "Oath;" Anderson's Law Dict., same title. See Cyc. vol 29, p. 1297.

11. *In Re Heath*, 40 Kan. 333, 19, p. 926.

12. *Broch v. Mulligan*, 10 Ohio, 123.

13. *King v. White*, 1 Leach. Cr. Case 430; Anderson's Law Dict., p. 720.

14. Greenleaf on Evid., 15 Ed. vol. 1, sec. 364b.

the party making the same had conscientious scruples in regard to making an oath.¹⁵

The witness must be sworn instead of affirming, unless he has conscientious scruples.¹⁶

Sec. 111.—Requisites, and manner of administering oaths.

When the requisites, or form of oath, are set out by statute it should be substantially followed.¹⁷ In Arkansas, Kansas, Missouri, Oklahoma and Texas the requisites of the oath, to be administered to a witness, are substantially the same, either by statutory requirement, or by practice in each of those states he is sworn to tell the truth the whole truth and nothing but the truth. The statutes do not prescribe either requisites or form for an oath to an *ex parte* statement or writing, but it is necessary that the party, swearing to the statement or writing, know the facts to be true, as stated therein, and that he swear that they are true and correct.

The statutes of all the above named states, and of most, if not all of the other states, provide that oaths shall be taken in the manner most binding upon the conscience. Usually, the oath is administered with reference to a belief in God as taught in the Christian religion,¹⁸ the closing words ordinarily being, "so help you God," but the statutes of

15. Certificate of the officer, that complainant made solemn affirmation to the complaint is conclusive, both as to complainants conscientious scruples in regard to an oath and that he affirmed under the pains and penalties of perjury. *State v. Welch*, 79 Me. 99, 8 Atl. 348;

16. *Williamson v. Carroll*, 16 N. J. L. 217.

17. *Arthur v. State*, 3 Tex. 403; *Davidson v. State*, 16 Tex. App. 336; *Dresden v. Goud*, 75 Me. 298; *Perry v. Thompson*, 19 N. J. L. 72; *Shattuck v. Bascome*, 105 N. Y. 39, 12 N. E. 283; *Merrett v. Porter*, 71 N. Y. 309, 27 Am. Rep. 47.

18. *Moline Plow Co. v. Fuehring*, 52 Neb. 541, 72 N. W. 1003; *Whitlock v. Roth*, 10 Barb. (N. Y.) 78; *City Nat. Bank v. Flippin*, 66 Tex. 610, 1 S. W. 897.

of Missouri provide that every person believing in any other than the Christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.¹⁹ This seems to be the practice in some of the other states.²⁰ An oath must be actually administered and taken in some form²¹ and, administering it over the telephone is not sufficient.²²

Sec. 112.—General form for affidavit.—

STATE OF —, }
County of —, } ss.

Before me, —, a notary public in and for — county, —, on this day personally appeared —, who being by me duly sworn upon oath says [here set out the facts stated by affiant].

[Signature of Affiant.]

19. R. S. Mo. sec. 6350.

20. Although a Chinaman stated that he believes in a Christian God, but further states that he believes that the burning "joss stick", is the true form of taking an oath. He should be sworn in the chinese form. *State v. Chyo Chiagk*, 92 Mo. 395, 4 S. W. 704. It is proper to administer, both the statutory oath and the Chinese oath, to a chinese witness. *Gin Pon v. State*, 16 Wash. 425, 47, P. 961. The mode of administering the Chinese oath, seems to be, to let the witness take a lighted candle and blow it out, declaring that if he did not tell the truth his soul would, in like manner be blown out. *Gin Pon v. State*, 16 Wash. 425, 47, P. 961; *Bow v. People*, 160 Ill. 438, 43 N. E. 593. In England, a Chinaman being sworn knelt and broke a saucer, and the clerk said "you shall tell the truth and the whole truth, the saucer is broken and if you do not tell the truth your soul will be broken like the saucer," held sufficient. 41 English common Law Reports, 139.

21. A large liberality is given to the form of an oath, but it is essential that the officer administer some form of oath, and that the affiant consciously take upon himself such oath. The mere delivery of an affidavit, by the person who has signed it, to an officer and a certificate made thereon by him, is insufficient, the oath must be administered and taken, in some form. *Oreiley v. People*, 86 N. Y. 154, 40 Am. Rep. 525.

22. An oath administered over the telephone is insufficient, even though the officer taking the same, recognized the voice of the maker. *Sullivan v. Flatonia Nat. Bank*, (Tex. Civ. App.) 83 S. W. 421.

Subscribed and sworn to before me this——day of——, A. D.
 ——, [Signature of Officer.]

[SEAL.]

N. P.,——County,——

If the affidavit is made in Arkansas, Kansas, Missouri, or Oklahoma, add: "My commission expires on the——day of——, A. D. 19——."

Sec. 113.—Form for oath to a written statement.—

Have the person taking the oath hold up his right hand and then ask: "Do you solemnly swear that (the facts stated in this writing, or the facts above set forth) are true and correct, so help you God."

Sec. 114.—Form for oath of witness—of a stenographer.—

Have the witness hold up his right hand and then say: "Do you solemnly swear that the evidence you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God."

If the witness has conscientious scruples as to swearing, instead of do you solemnly swear, say to him: "Do you solemnly and sincerely declare and affirm," etc.

The laws of Arkansas provide that the deposition of a witness may be written by a stenographer who must be sworn by the officer before whom it is taken that he will correctly write and transcribe the same. In administering the oath to the stenographer have him hold up his hand and say: "Do you solemnly swear that you will correctly write and transcribe the answers and depositions of the witnesses——and——now being taken before me; so help you God." (See sec. 173.) Castles Supplement, Ark., sec. 3185a.

Sec. 115.—Affidavit by agent etc., general form.—

STATE OF ——, }
 County of ——, } ss.

Before me, —— ——, a notary public in and for——county,——, on this day personally appeared—— ——, who being duly sworn upon oath says, that he is agent (or attorney in fact or attorney of record)

for — of — County, State of —. And that [here set out the facts sworn to] [Signature of Affiant.]

Subscribed and sworn to by — —, before me, this—day of —, A. D. 19—.

[SEAL.]

[Signature of Officer.]

IF THE AFFIDAVIT BE MADE FOR A FIRM by on of its members, it should state the fact that he is a member of the firm.

If made by an officer of a corporation state what office he holds.

Sec. 116.—Affidavit made by foreigner.—

When a foreigner or one who can not speak the English language makes an affidavit, the officer before whom the same is made should have some person who understands the language spoken by affiant come before him and interpret the contents of the affidavit and the oath to affiant, and after the signature of the affiant and the usual certificate, the officer should indorse upon such affidavit the following certificate:

STATE OF —, }
County of —. } ss.

The said — —, affiant being a (here state nationality of affiant) and not understanding the English language, on this day personally came, — —, who is skilled in the language and interpreted and explained to affiant the contents of the foregoing affidavit and the oath administered by me to affiant, and the said — —, being by me duly sworn, stated upon oath that he had truly and fully interpreted said affidavit and oath to affiant.

Witness my hand and seal of office, this—day of —, A. D. 19—.

[SEAL.]

[Official Signature.]

Sec. 117.—Affidavit to claim against estate of deceased person.—

STATE OF —, }
County of —. } ss.

Before me, — —, a notary public, personally came and appeared — —, who being sworn says that the claim hereto attached in favor of — — against — —, deceased, is just and that all legal offsets, payments and credits known to affiant have been allowed. [If the affidavit is made by any person other than the owner of the

claim it should further state why it is not sworn to by the claimant. And that affiant is cognizant of the facts herein set forth.]

[Signature of Affiant.]

Subscribed and sworn to before me, this—— day of——, A. D. 19—.

[SEAL.]

[Signature of Officer.]

N. P.,——County,——.

Sec. 118.—Affidavit for an estray.—

STATE OF ——, }
County of ——, } ss.

Before me,——, a notary public, on this day personally came—— who, being by me duly sworn upon oath says that (here describe the animal), which he wishes to astray was taken up by him upon his own plantation (or upon land adjoining his plantation.) That neither the marks or brands upon said animal have been altered or disfigured since the same was taken up by him; that notice has been given as the law requires and that no owner has been found.

[Signature of Affiant.]

Subscribed and sworn to before me, this——day of——, A. D. 19—.

[SEAL.]

(Official Signature.)

Sec. 119.—Affidavit of owner of an estray.—

STATE OF ——, }
County of ——, } ss.

Before me,——, a notary public in and for——County,——, on this day personally appeared——, to me well known to be a credible person (or proven to me to be a credible person on the oath of), who being by me duly sworn says that a certain (here describe animal by color, age, height, marks and brands) estrayed by——, before——, a justice of the peace in and for precinct (or township) no—, in the county of ——, State of ——, belongs to and is the property of him the said ——.

[Signature of Affiant.]

Subscribed and sworn to before me this ——day of ——, A. D. 19—.

[SEAL.]

(Official Signature.)

Sec. 120.—Affidavit to enforce a laborer's lien.

STATE OF ——, }
County of ——, } ss.

Before me,——, a notary public in and for —— County, ——, on this day personally appeared ——, who, being by me duly sworn upon

oath states that — is justly indebted to him in the sum of \$—, as shown by the above itemized account which is just, true and unpaid and upon which all just and lawful offsets, payments and credits have been allowed. And that said account is for labor performed in (here state what kind of labor and describe fully the property upon which it was performed.) That affiant has a laborer's lien upon said property to secure the payment of said account which is now due and that said labor was performed within thirty days next preceding the filing of this account.

[Signature of Affiant.]

Subscribed and sworn to before me, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Sec. 121.—Affidavit to secure a mechanic's, etc., lien.—

STATE OF —, }
County of —. } ss.

Before me, —, a notary public in and for — County, —, on this day personally appeared — —, who, being duly sworn upon oath says, that the foregoing annexed account is a true and correct statement of the labor performed for (or material furnished to) — —, of — County, —. That said account has not been paid and that the prices therein set forth are just and reasonable and that all just and lawful offsets, payments and credits have been allowed; that said labor was performed (or said materials furnished) in accordance with a contract entered into by and between — — and — —, on the — day of —, A. D. — (if the account is for material furnished, add, here). And affiant on the — day of —, A. D. 19—, gave to the said —, written notice of said account, showing each item furnished, and the amount due on each bill. Affiant further says that at the time said contract was made and entered into and at the time said labor was performed (or, material furnished) — was the owner of the land upon which the house (barn or other improvement) was erected, upon which said labor was performed (or for which said material was furnished), (or if the labor performed or material furnished was for repairs, state that —, at the time said contract was entered into and at the time said labor was performed, etc., was the owner of the house, etc., describing the same, upon which the repairs were made for which said labor was performed, and was also the owner of the lot of land upon which said house was situated), which lot of land is described as follows: [Here insert description of

land], and that affiant, to secure the payment of such account, claims his lien upon all of the aforesaid property.

(Signature of Affiant.)

Subscribed and sworn to before me this — day of —, A. D. 19—.

(Signature of Officer.)

[SEAL.]

N. P., — County, —.

Sec. 122.—Lien filed within what time.—

In ARKANSAS, contractors and sub-contractors must file their liens with the clerk of the circuit court for the county in which the labor was performed within sixty days and sue within one year from the time the labor was performed or material furnished. Laborers must file their liens within ninety days and sue within nine months.

In KANSAS, original contractors must file their liens with the clerk of the district court within four months. Sub-contractors and others must file their liens within sixty days and all must sue within one year.

In MISSOURI, original contractors must file their liens within six months. Laborers or journeymen must file their liens within sixty days and all other persons within four months.

Laborers, journeymen and sub-contractors must give owner ten days' notice of intention to file lien.

In OKLAHOMA, accounts must be filed within four months.

In TEXAS, contractors must file lien with the county clerk of the county in which the labor was performed within four months, and laborers under contractor must notify owner within thirty days that his account has not been paid by contractor.

IF THE LABOR IS PERFORMED for or material furnished to a contractor, builder, agent or receiver and not to the owner of the property, the affidavit should so state, and state that the work was done upon, or the material was furnished for a house or other improvement erected upon land belonging to ——. And in case the account is for material furnished should state that the affiant had

given the owner notice in writing showing each item furnished and the amount due on each bill.

IF THE MATERIAL was furnished to a railroad company its agent, or receiver, to construct or repair a road or other property belonging thereto, then the affidavit should describe such railroad by its charter name, and give the name of the receiver, if any, and the agent with whom the contract was made; and state that affiant claims a lien on said railroad and all the property belonging or incident thereto.

The statutes of Arkansas, Kansas, Missouri and Texas provide for sworn accounts to be used, as pleading or evidence, or both, in suits in justice courts. There is no provision in the statutes of Oklahoma for the using of such accounts.

Sec. 123.—Affidavit to an account in Arkansas.—

STATE OF ARKANSAS, }
County of —, } ss.

I, — [if agent, attorney or one of a firm, so state], do solemnly swear that nothing has been paid or delivered toward the satisfaction of the above demand except what is credited thereon, and that the sum of \$— principal, and \$— interest, as above demanded is justly due and the above account is just and correct.

Dated this —day of —, A. D. 19—.

(Signature of Affiant.)

Subscribed and sworn to before me this —day of —, A. D. 19—.

[SEAL.]

—, N. P.

My commission expires on the —day of —, A. D. 19—.

Sec. 124.—Affidavit to an account in Kansas.—

STATE OF KANSAS, }
County of —, } ss.

Before me —, a notary public in and for the county and state aforesaid, personally came —, who, being by me first duly sworn, says that he is [if agent or attorney, so state] the above named claimant, that the above account is true, correct and just and that he has given credit to the above named debtor for all payments and offsets to which he is entitled.

(Signature of Affiant.)

Subscribed and sworn to before me this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

My commission expires on the —day of —, A. D. 19—.

Sec. 125.—Affidavit to an account in Missouri.—

STATE OF MISSOURI, }
 County of ———. } ss.

Before me, ———, a notary public, duly commissioned and qualified in and for the county of ———, state of Missouri, on this day personally appeared ———, who, after being by me duly sworn, stated that he is [agent, attorney, member of firm or officer of corporation, as the case may be] and that the foregoing and annexed open account in favor of said ———, and against ———, showing amount due of \$——, is, within the knowledge of affiant, just, true and unpaid, and that the said sum of \$—— is now due and owing to ———, and that all just and lawful offsets, payments and credits have been allowed.

[Signature of Affiant.]

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

My commission expires on the ——— day of ———, A. D. 19—.

[SEAL.]

[Official Signature.]

Sec. 126.—Affidavit to an account in Texas.—

STATE OF TEXAS, }
 County of ———. } ss.

Before me, ———, a notary public in and for ——— county, Texas, on this day personally ———, who, being duly sworn, upon oath says that the above and foregoing account in favor of ———, and against ———, is, within his knowledge, just and true, that it is due and unpaid and that all just and lawful offsets, payments and credits have been allowed.

[Signature of Affiant.]

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

[Signature of Officer.]

[SEAL.]

N. P., ——— County, Texas.

CHAPTER VII.

CONTRACTS.

Sec.	Sec.
127. Contract defined.	131. Written contracts.
128. Parties to contract.	132. What contracts must be written.
129. The consideration.	133. Forms for contracts.
130. Mutual consent.	

Sec. 127.—Contract, definition of.—

A contract is an agreement between two or more persons upon sufficient consideration to do or not to do a certain thing.¹

There have been many definitions of contracts, both by courts and text-writers, and various criticisms of almost every definition; but for, clearness, conciseness and completeness, there has not been any improvement on the above definition given by Mr. Justice Blackstone. It contains, either expressly or by clear implication, every element pointed out by courts and modern text writers as necessary to the validity of a contract. In Oklahoma a contract is defined by statute, to be an agreement to do or not to do a certain thing. (R. L. Okla. sec. 875) This definition does not mention a consideration, but the next section (876) prescribing the requisites of a contract says there should be sufficient cause or consideration.

Sec. 128.—Parties to a contract.—

There may be more than two parties to a contract, but can not be less than two. A man can not contract with himself, because he can not be under a legal obligation to

1. Blackstone's Commentaries, sec. 449; 2 Kent's Commentaries, sec. 449; *Sturgis v. Crowninshield*, 4 Wheat. (U. S.) 122, 4 L. Ed. 529; *Charles River Bridge v. Warner River Bridge*, 11 Pet. (U. S.) 420, 9 L. Ed. 773; *Robinson v. McGee*, 9 Cal. 81, 70 Am. Dec. 638.

himself.² In order to bind a party by contract he must have sufficient understanding,³ age and freedom of will, and of the exercise of it, for the given case.⁴ Lunatics, and persons *non compis mentis*, can not make contracts.⁵ Infants may make contracts, but contracts made by them, except for necessities, are voidable by the infant during his minority or within a reasonable time after he reaches the age of twenty-one years;⁶ but if after he reaches his

2. An administrator became indebted to the estate for which he was acting,, and made a note payable to himself as administrator, with a mortgage to secure it. The court said, in whatever double capacity a man may act, it is clear that he can not contract with himself; he can not be both obligor and obligee. *Gorman v. Meecham*, 63 Vt. 231, 22 Atl. 572, 12 L. R. A. 676. See, also, *Mayor v. Commonwealth*, 1 Ill. 200; *Collins v. Tilston* 58 Ind. 374.

3. *Reaudo v. Misplay*, 90 Mo. 251, 2 S. W. 405, 59 Am. Rep. 13; *Weis v. Ahrenbeck*, 5 Tex. C. A. 542, 24 S. W. 356; *T. P. R. Co.*, 3 Tex. C. 266, 22 S. W. 628.

4. Must be twenty one years of age. *Bozeman v. Browning*, 31 Ark. 365; *K. C. R. Co. v. Moore*, 66 Ark. 409, 50 S. W. 996; *Kerr v. Bell*, 44 Mo. 120; *Asky v. Williams*, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176. Must have freedom of will and of the exercise of it in the particular case. *Baseley v. Shauner*, 26 Ark. 280; *Diller v. Johnson*, 37 Tex. 47. Consent of the parties is the very essence of the contract, if there be compulsion there is no consent; Moral compulsion, such as that to take life or inflict, great bodily harm, as well as imprisonment, is everywhere regarded, in law, as sufficient to destroy free agency without which there can be no contract. *Pearce v. Brown*, 7 Wall. (U. S.) 205, 19 L. Ed. 134.

5. Contracts by insane persons are absolutely void. *Walker v. Winn*, 127 Ala. 577, 30 So. 524; *Elder v. Schumacher*, 18 Colo. 433, 33, p. 175; *Farley v. Parker*, 6 Ore. 105, 25 Am. Rep. 504; *Dexter v. Hall*, 15 Wall. (U. S.) 9, 21 L. Ed. 73. Contracts with persons who may be insane, but who have not been adjudged insane, are usually held to be only voidable. *George v. St. Louis etc. R. Co* 34 Ark. 613; *Gribben v. Maxwell*, 34 Kan. 8, 7, p. 584, 55 Am. Rep. 233; *Navasoto Bank v. McGinty*, (Tex. C. A.) 539, 69 S. W. 495; *Elston v. Jasper*, 45 Tex. 409.

6. Infant is liable for necessities and may contract therefor. *Cooper v. State*, 47 Ark. 421; *Kerr v. Bell*, 44 Mo. 120; *Askey v. v.*

majority he elects to stand by his contract, or does any act showing an intention to affirm it, he can not thereafter avoid it.⁷ If he has received under the contract anything of value, equity will require him to return the same before he can avoid the contract.⁸

A married woman may contract for necessities for herself and children and expenses for the benefit of her separate property.

In Arkansas, a married woman may convey her real estate by deed of conveyance executed by herself the same

Williams, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176; Peck v. Cain, 27 Tex. C. A. 38, 63 S. W. 177. An infant's note, given for necessities, is enforceable. Guthrie v. Morris, 22 Ark. 411. Necessaries are not merely such things as are necessary to a bare subsistence, but include things necessary to the infant's use and comfort, considering his state and condition in life. Kerr v. Bell, 44 Mo. 120; Crafts v. Carr, 23 R. I. 397, 53 Atl. 275, 60 L. R. A. 128, 96 A. S. R. 721. Board, clothing, medicine and medical attention are among things held to be necessities. Kerr v. Bell, 44 Mo. 120; Kilgore v. Rich, 83 Me. 305, 22 Atl. 176, 12 L. R. A. 859, 29 A. S. R. 780. A buggy is not a necessity. Heffington v. Jackson, (Tex. C. A.), 96 S. W. 108. A telegram, by an infant in destitute circumstances, to his parents for assistance is a necessity. W. U. Tel. Co. v. Greer, 115 Tenn. 368, 89 S. W. 327, 1 L. R. A. (N. S.) 525.

7. Infant can not be bound by contract except for necessities. K. C. R. Co. v. Moon, 66 Ark. 409, 50 S. W. 996; Bozeman v. Brown, 31 Ark. 364; Munk v. Weidner, 9 Tex. C. A. 495, 29 S. W. 409; R. T. Land Co. v. Sanford, (Tex. C. A.) 24 S. W. 587. If he fails to disaffirm his contract within a reasonable time, after reaching his majority, he will be bound by it. Dillon v. Burham, 43 Kan. 77, 22, P. 1016; McCollough v. Findley, (Kan.) 77, P. 696; Vogelsang v. Null, 67 Tex. 468, 3 S. W. 451; Simkins v. Searcy, 10 Tex. C. A. 411, 32 S. W. 849; Keller v. Cooper, 12 Ky. L. Rep. 188; Lawson v. Lovejoy, 8 Me. 405, 23 Am. Dec. 256; Philpot v. Sandwich Mfg. Co., 18 Neb. 54, 24 N. W. 428.

8. On avoiding contract he must restore what he has received. Price v. Blankenship, 144 Mo. 203, 45 S. W. 1123; Cummings v. Powell, 8 Tex. 93; Kilgore v. Jorden, 17 Tex. 347; Bullock v. Sprowells, 93 Tex. 191, 54 S. W. 661, 77 A. S. R. 849.

as if she were a *feme sole*. In Kansas she may sell and convey her real and personal property and enter into any contract with reference to the same in the same manner, to the same extent and with like effect as a married man may in relation to his real and personal property. In Missouri, a married woman is deemed a *feme sole*, so far as to enable her to carry on and transact business on her own account and to contract and be contracted with.⁹

Sec. 129.—The consideration.—

It is essential to the validity of a contract that it be founded upon a sufficient consideration.¹⁰ Something must be given in exchange or some inducement offered by which some benefit will be gained, or some detriment withheld. A contract without a consideration can not be enforced, but any benefit, however slight to the person making the promise, or to a third person, or any loss prevented to such parties, or any loss sustained by the opposite party, may, in the absence of fraud, be a sufficient consideration upon which to base a contract.¹¹

9. Kirby's Dig. Ark. secs. 740, 5209, G. S. Kan. sec. 4873; R. S. Mo. sec. 8304. At common law, a married woman may contract for necessities for herself and children. *Wright v. Hays*, 10 Tex. 132, 60 Am. Dec. 200. May contract debts for necessities and for benefits to her separate property. *Green v. Ferguson*, 62 Tex. 528; *Crieger v. McCracken*, 87 Tex. 586, 30 S. W. 537.

10. *Raiganel v. Ayliff*, 16 Ark. 594; *Pinkerton v. Hudson*, 87 Ark. 506, 113 S. W. 35; *Clark v. Libly*, 17 Kan. 634; *Bailey v. Walker*, 29 Mo. 407; *Bailey v. Smock*, 61 Mo. 213; *Riley v. Stevenson*, 118 Mo. App. 187, 94 S. W. 781; *Clark v. Robinson*, 135 Mo. App. 90, 115 S. W. 514; *George v. Chicago etc. R. Co.*, 214 Mo. 551, 113 S. W. 1099; *Jones v. Holliday*, 11 Tex. 412, 62 Am. Dec. 487; *St. Louis & S. F. R. Co. v. Warren*, (Tex. C. A.) 80 S. W. 537; *Muller v. Bell*, (Tex. Civ. App.) 117 S. W. 993. In Kansas all written contracts import a consideration. *Warren v. Johnson*, 17 P. 592.

11. *Bell v. Greenwood*, 21 Ark. 249; *Holmden v. Jones*, 42 Kan. 762, 23 p. 92; *Lindell v. Rakes*, 60 Mo. 249, 21 Am. Rep. 395; *Scriba*

Sec. 130.—Mutual consent.—

Mutual consent is necessary to the validity of a contract so when there is an error or mistake of fact going to the essence of the contract, it is void.¹² When one party is induced to enter into a contract by the fraud, deceit or misrepresentation of the other party, he may, upon the discovery of such fraud or misrepresentation, rescind the contract.¹³

Sec. 131.—Written contracts.—

It is better practice, though not absolutely necessary, to have all express contracts reduced to writing, in order to prevent disputes in regard to their terms. When a notary is called upon to draw a contract, he should be very careful to ascertain that the parties fully understand each other and understand alike all the conditions of the contract, and then include every condition, term and contingency in the writing, for the writing alone, in the absence of fraud, will be

v. Neeley, 130 Mo. App. 258, 109 S. W. 854; *Burgher v. Wabash R. Co.*, 139 Mo. App. 62, 120 S. W. 673; *Beaucham v. Couch*, (Tex. C. A.) 117 S. W. 924. A consideration of one dollar, paid in a gas and oil lease is merely nominal, and insufficient to support the contract. *Great Western Oil Co. v. Carpenter*, (Tex. C. A.) 95 S. W. 57.

12. *McFarlane v. York*, 90 Ark. 88, 117 S. W. 773; *Heiland v. Ertet*, (Kan. App.) 44 p. 1005; *Trounstine v. Sellers*, (Kan.) 1 p. 441; *Luckey v. St. L. & S. F. R. Co.*, 133 Mo. App. 589, 113 S. W. 703; *Embry v. Hargadin McKittrick D. G. Co.*, (Mo. App.) 105 S. W. 777; *Forttran v. Stowers*, (Tex. Civ. App.) 113 S. W. 631; *American Surety Co. v. San Antonio L. & T. Co.*, (Tex. Civ. App.) 98 S. W. 387.

13. *Reeder v. Meredith*, 78 Ark. 111, 93 S. W. 558; *Reeder v. Ford*, 78 Ark. 603, 93 S. W. 560; *American Standard Jewelry Co. v. Wethenington*, 81 Ark. 134, 98 S. W. 695; *Shook v. Puritan Mfg. Co.* 75 Kan. 301, 89 p. 653, 8 L. R. A. (N. S.) 1043; *St. Louis Jewelry Co. v. Baird*, 75 Kan. 837, 90 p. 782; *Raley v. Williams*, 73 Mo. 310; *Seal v. Holcomb*, (Tex. C. A.) 107 S. W. 916; *Cabanese v. Holland*, 19, Tex. C. A. 391, 47 S. W. 379.

looked to, to ascertain the purpose and intention of the parties, parol evidence being inadmissible to vary the terms of a valid written contract. No person will be allowed to testify that this or that term, condition or provision is different from what it is plainly expressed in writing to be, though in case a contract is not plainly expressed in writing, a person may testify to what was said and done by the parties at the time the contract was entered into, so that the court may decide what was the intention and purpose of the parties.¹⁴

Sec. 132.—What contracts must be written.—

Contracts in regard to the following matters must be in writing:

1.—The promise of an executor or administrator to answer, out of his own estate, any debt or damage due from his testator or intestate.

2.—A promise to answer for the debt, default or miscarriage of another.

3.—Any agreement made upon consideration of marriage.

4.—A contract for the sale of real estate or the lease thereof for a longer term than one year.

5.—Any contract that is not to be performed within one year from the date it is made.

6.—In Arkansas, every promise to pay a debt that has been discharged in bankruptcy.

7.—In Arkansas and Missouri, no contract for the sale of goods, wares and merchandise for the price of thirty dollars or upward, shall be allowed to be good, unless in writing, unless the buyer shall accept

14. Parol evidence is inadmissible to contradict written contracts. *Colonial Mfg. Co. v. Jeter*, 71 Ark. 185, 71 S. W. 945; *Rase v. Lanyon Zinc Co.* 68 Kan. 126, 74 p. 625; *Willard v. Ostrander*, 46 Kan. 591, 26 p. 1017; *Boyd v. Paul*, 125 Mo. 9, 28 S. W. 171; *Moorhead v. Davis*, 13 Okla. 166, 73 p. 1103; *Liverpoole Ins. Co. v. Lumber Co.* 11 Okla. 579, 69 p. 936; *Launs v. Schuber*, 77 Tex. 24, 13 S. W. 614; *Sanborn v. Plowman*, 13 Tex. C. A. 95, 35 S. W. 193. May be admitted to explain written contract. *Parker v. Norman*, 65 Ark. 333, 46 S. W. 134; *Mason v. Ryns*, 26 Kan. 464; *Edwards v. Smith*, 63 Mo. 119; *Converse v. Langshaw*, 81 Tex. 275, 16 S. W. 1031.

and actually receive the goods, or a part thereof or give something in earnest to bind the bargain.

8—In Missouri, in cities of more than 300,000 inhabitants, all applications for loans on real estate, and all appointments of agents to sell lands must be in writing.

9—In Oklahoma, all agreements to sell goods and chattels, at a price of fifty dollars or more, unless possession is immediately changed and except when sold at auction, must be in writing.

Kirby's Dig. Ark. secs. 3654-3656; G. S. Kan. secs. 3833-3838; R. S. Mo. secs. 2781-2784; R. L. Okla. sec. 941; R. S. Tex. art. 3965.

Sec. 133.—Forms for contracts.—

There are no forms for contracts specified or required by law, and the subject-matter, terms and conditions of contracts are so varied and multiform that it would be useless to undertake to write a set of forms that would be a guide to the notary. The contract should show in what county and state it is entered into, the name and residence of all the parties, the consideration and the thing or things to be done by each party. It should be dated and signed by all the parties and, if it is to be recorded, it should be acknowledged by all parties. The following is a general form for the commencement and close of a contract:

STATE OF —, }
County of —. } ss.

This agreement this day made and entered into by and between —, of the county of —, state of —, and —, of the county of —, state aforesaid, Witnesseth, that [here state fully the substance, conditions and terms of the contract, the consideration, and plainly what is to be done by each party].

Witness our hands at —, — county, —, this —day of —, A. D. 19—.

For acknowledgment, see forms of acknowledgments for the state, in which the contract is to be performed.

CHAPTER VIII.

CONVEYANCES.

Sec.		Sec.	
134.	Conveyance defined.	139.	Form by an attorney in fact.
135.	Must be in writing.	140.	Forms by corporation.
136.	Conveyance of homestead.	141.	Form by an executor.
137.	Forms for conveyance.	142.	Forms for power of attorney.
138.	Form for conveyance of homestead and relinquishment of dower.	143.	Oklahoma forms.

Sec. 134.—Conveyance defined.—

A conveyance is a transfer by one person to another, or others, of the title to or some interest in real estate.¹

Sec. 135.—Conveyance must be in writing.—

All conveyances of the title to real estate, or any interest therein, and all mortgages, liens or encumbrances thereon, and all leases, or grants for a term of more than one year, must be in writing and subscribed to by the party or parties making the conveyance or grant.² Such conveyance will be void as to creditors and subsequent purchasers in good faith, without notice thereof and for a valuable consideration, unless it be acknowledged by the grantor or party making it, or proved as required by law before some officer authorized to take such acknowledgments or proof, and filed for record in the office of the clerk of the county in which such real estate or a part thereof is situated.³

1. Anderson's Law Dict.; Black's Law Dict. Bouvier's Law Dict., title, Conveyance.

2. Kirby's Dig. Ark. sec. 3654; G. S. Kan. sec. 3834; R. S. Mo. sec. 2781; R. L. Okla. sec. 745.

3. See acknowledgments.

Sec. 136.—Husband and wife shall join in conveyance of homestead, etc.—

The husband and wife must join in the conveyance of the homestead in all states, and in the conveyance of the wife's separate property in Texas. In Arkansas, Kansas, Missouri and Oklahoma the husband need not join in deed to wife's equitable separate property. The husband alone may convey his separate property, or the community property of himself and wife other than the homestead, in Texas and Kansas, but can only transfer subject to dower in Missouri and Arkansas. Dower has been abolished in Oklahoma; the statute of that state is silent as to power of the husband to convey real property acquired after marriage, other than the homestead; the wife must join with the husband in the conveyance of the homestead.

Sec. 137.—Forms for conveyances.—

There are no set words or particular forms required by law for the conveyance of real estate. If the instrument shows clearly that the intention of the parties is to transfer the title of the property or some interest therein, it will be sufficient. In Arkansas the conveyance of the homestead, and in Texas all conveyances by married women, must be properly acknowledged, or they will be void as to the married woman's interest.

The following is a sufficient general form for conveyance in fee simple:

STATE OF —, }
County of —. } ss.

Know all men by these presents, that I, —, of the county of —, and state of —, for and in consideration of the sum of — dollars, to me in hand paid by —, the receipt of which is hereby acknowledged [if notes are given or assumed, add "and the further consideration of the said — — certain promissory notes, or that the said — assume — certain promissory notes, etc., fully describing the notes], have granted, bargained, sold, and do by these presents grant, sell and convey unto the said — of — county, state of —, all that certain tract or parcel of land situated in — county, — [here

describe the land by section, township, range, or name of survey and metes and bounds], to have and to hold the above described premises, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto the said —, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said —, his heirs and assigns against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness my hand at —, on this — day of —, A. D. 19—.

Sec. 138.—Form for conveyance of homestead and relinquishment of dower.—

STATE OF —, }
County of —. } ss.

Know all men by these presents, that we, — and —, his wife, of the county of —, state aforesaid, for and in consideration of the sum of — dollars, to us in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, and do by these presents grant, bargain, sell and convey unto the said —, of the county of —, state of —, all that certain [here describe the property] with all and singular the rights, privileges and appurtenances thereunto in anywise belonging, to have and to hold unto the said —, his heirs and assigns forever; and I the said [name of husband] do covenant with the said — that I am seized in fee simple of said premises and have the lawful right to convey the same, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend the same unto the said, —, his heirs and assigns against every person whomsoever, lawfully claiming or to claim the same, or any part thereof; and I, the said —, wife of the said —, do hereby join in this conveyance and for the consideration above stated convey and renounce all right of homestead, and relinquish and release unto the said —, his heirs and assigns all right, claim and possibility of dower in and to said property.

Witness our hands at —, this — day of —, A. D. 19—.

Sec. 139.—Form for conveyance by an attorney in fact.—

STATE OF —, }
County of —. } ss.

Know all men by these presents, that I, —, of the county of —, state aforesaid, by and through my attorney in fact, —, duly

constituted and appointed by me by power of attorney dated on the — day of —, A. D. 19—, and recorded in book —, page — of the records of —, county —, for and in consideration of [proceed as in other deeds.]

Witness my hand this — day of —, A. D. 19—.

By—

Attorney in Fact.

Sec. 140.—Form for conveyance by a corporation.—

STATE OF —, }
County of —. } ss.

Know all men by these presents, that —, a private corporation duly incorporated under the laws of the state of —, with its principal office and place of business in —, — county, said state, for and in consideration of the sum of — dollars, etc. [same as in ordinary deed].

In witness whereof the said corporation has caused its name to be signed and its corporate seal to be affixed, on this the — day of —, A. D. 19—.

[SEAL.]

Attest:

—, Secretary.

By — President of said

— Corporation.

Sec. 141—Form for conveyance by executor under a will.—

STATE OF —, }
County of —. } ss.

Whereas, the last will of —, deceased, late of the county of —, state aforesaid, was duly admitted to probate at the — term A. D. 19— of the probate court in and for — county, as shown by order of said court, duly recorded in book —, page — of the probate minutes for said county, and — was by said order of court confirmed and appointed executor of said will; and, whereas, the said —, deceased, did authorize and empower his said executor to make sale of and convey all of his estate as to him might seem best; now, therefore, know all men by these presents, that I, the said —, executor aforesaid, by virtue of said authority and in consideration of the sum of — dollars, etc. [proceed as in ordinary deed.]

To have and to hold all and singular the said premises unto the said —, his heirs and assigns forever.

Witness my hand at —, this — day of —, A. D. 19—.

—,
Executor of the will of

—, deceased.

Sec. 142.—Form for power of attorney.—

STATE OF —, }
 County of —, } ss.

Know all men by these presents, that I, —, of the county of —, state aforesaid, have this day made, constituted and appointed and do by these presents make, constitute and appoint —, of — county —, my true and lawful attorney in fact for me and in my name and stead to sell, convey, make title to and warrant — acres of land situated in — county — [here describe land] or if power of attorney is given for some other purpose, state fully for what purpose it is given] giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming whatsoever my said attorney shall and may do under and by virtue of this instrument.

Witness my hand this — day of —, A. D. 19—.

[Signature.]

Sec. 143.—Forms in Oklahoma.—

The statutes of Oklahoma set out the following forms for a deed and mortgage and provide that such forms shall be sufficient in that state.⁴

FORM FOR DEED.

Know all men by these presents. That —, party of the first part in consideration of the sum of — dollars in hand paid, the receipt of which is hereby acknowledged, do—hereby grant bargain, sell and convey unto — the following described real property and premises situated in — county, Oklahoma, to wit, [here describe property] together with all the improvements thereon and the appurtenances thereunto belonging and warrant the title to the same. To have and to hold said described premises unto said party of the second part, — heirs and assigns forever free clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this — day of — 19—.

4. R. L. Okla. secs. 1184, 4015. For quit claim deed insert "quit claim" instead of "warrant." R. L. Okla. sec. 1185.

FORM FOR MORTGAGE.

Know all men by these presents. That we, — and —, of the county of — and state of —, parties of the first part, have mortgaged and hereby mortgage to — of the county of —, state of —, party of the second part, the following described real estate and premises situated in — county, state of Oklahoma, to wit: [Here describe property] with all the improvements thereon and appurtenances thereunto belonging and warrant the title to the same. This mortgage is given to secure the principal sum of — dollars with interest thereon at the rate of — percentum per annum payable annually (or semiannually as the case may be) from — according to the terms of — certain promissory note—described as follows, to wit; [Here describe note.]

Dated this the — day of —, 19—.

Statutes of the other four states do not prescribe any special forms for conveyance or mortgage.

CHAPTER IX.

DEPOSITIONS.

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| Sec. | Sec. |
| 144. Deposition defined. | 167. Answers which would needlessly degrade witness. |
| 145. Notaries may take depositions. | 168. Claiming privilege. |
| 146. Must conform to commission | 169. Irrelevant questions. |
| 147. Manner of taking depositions. | 170. Statutory provisions as to contempt. |
| 148. Taken under notice. | 171. The caption. |
| 149. Taken under commission. | 172. Writing down testimony. |
| 150. Subpoena defined. | 173. Stenographer. |
| 151. Notaries may issue subpoenas. | 174. What <i>linguae</i> used. |
| 152. By whom served. | 175. Interpreters. |
| 153. Fees of witnesses. | 176. Exhibits. |
| 154. When subpoena should be served. | 177. Adjournment. |
| 155. Return of subpoena. | 178. When parties agree on another day. |
| 156. Writ of attachment when issued. | 179. Reading deposition to witness. |
| 157. Nonattendance of witness—contempt. | 180. Signing by witness. |
| 158. Judgment of contempt. | 181. The certificate. |
| 159. Witness refusing to be sworn or to testify. | 182. Certificate for several witnesses. |
| 160. Witness refusing to answer. | 183. Certificate—statutory requirements. |
| 161. When answer would criminate witness. | 184. Signature and seal. |
| 162. Confidential communications—husband and wife. | 185. Certificate of official character. |
| 163. Attorney and client. | 186. Amendment of certificate. |
| 164. Ministers, physicians, etc. | 187. Returning the deposition. |
| 165. Statutes—how construed. | 188. Disqualification of officer. |
| 166. Secrets of state. | 189. Statutory provisions in Texas. |
| | 190. Who may take depositions. |
| | 191. Certificate and return. |

Sec. 144.—Deposition defined.—

A deposition is evidence given by a witness in answer to interrogatories, either oral or written, which evidence is written down for future use by or under the supervision of an officer authorized by a commission or by agreement of all parties interested in taking the same. In its general sense it includes all written evidence verified by oath, but in its more appropriate sense it is limited to the written testimony of a witness given in the course of a judicial proceeding, either at law or in equity.¹

Sec. 145.—Notaries public may take depositions—Local statutes govern same.—

The statutes of Arkansas, Kansas, Missouri, Oklahoma and Texas expressly provide that notaries public may take depositions either within or out of the states. The statutes of most if not all of the other states have similar provisions. In Arkansas, any notary may take depositions anywhere in the state. Castle's Supplement, sec. 5745. It will therefore be well to examine some of the decisions of the courts touching their powers and duties in this respect. It is not the object of this work, and the author does not attempt to treat the subject of depositions generally; it is the province of this work to lay down the law and notice the decisions in regard to the work of the notary or officer taking the deposi-

1. Anderson's Law Dict. *Aven v. Wilson*, 61 Ark. 287, 32 S. W. 1074. *Indianapolis Water Co. v. American Straw Board Co.*, 65 Fed. 534; *Baker v. McGrath*, 106 Ga. 419, 32 S. E. 370.

All of the requirements of the statute under which the deposition is taken must be complied with. The omission of any thing, named in the statute, to be done destroys their competency as evidence, if objected to. *Stone v. Stillwell*, 23 Ark. 444; *Babb v. Aldrich*, 45 Kan. 218, 25 P. 558; *Atchison, T. & S. F. R. Co. v. Pearson*, 49 P. 681. *Garner v. Cutler*, 28 Tex. 182; *Laird v. Ivans*. 45 Tex. 623; *Rice v. Ward*, 95 Tex. 536, 56 S. W. 747; *Adams v. State*, 19 Tex. App. 261. If objected to a deposition not returned as required by statute, can not be read in evidence. *Avery v. Avery*, 12 Tex. 54, 62 Am. Dec. 513.

tion. The statute of the state in which the commission is issued governs the taking of the deposition, and it is necessary that every statutory requirement be substantially complied with.² The notary should, in taking and certifying depositions, carefully follow the forms, for the state in which the deposition is to be used.

Sec. 146.—Depositions should also conform to commission.

The taking of the deposition should be in conformity with the notice and commission.³ In a number of the states the statute requires the party desiring the depositions of a witness to notify the adverse party of the time and place he intends to take such depositions, and when either the

2. The certificate should show that the oath was administered by the officer taking the deposition, or, if the oath is administered by another, the certificate should show that the witness was sworn in the presence of the officer taking the deposition, and that the person administering the oath was an officer authorized to administer oaths. *Patton v. King*, 26 Tex. 685, 84 Am. Dec. 596; *Powers v. Shepherd*, 21 N. H. 60, 53 Am. Dec. 168. That the witness was sworn by the officer in due form of law is sufficient. *Neill v. Codey*, 26 Tex. 286. A justice of the peace may administer the oath, if done in the presence of the officer taking the depositions, and the certificate shows that fact. *Vaughan v. Blanchard*, 2 Dall. (U. S.) 192, 1 L. Ed. 344.

The certificate must be signed by the officer taking the depositions. *Bush v. Barrow*, 78 Tex. 6, 14 S. W. 238. If more than one officer acts, in taking depositions, all should sign the certificate or, each make a separate certificate showing what he did. *Brown v. Southworth*, 9 Paige (N. Y.), 351; *Water v. Freedland*, 2 Miles [Pa.], 161. The answers of the witnesses should be attached to the commission, and all papers to be returned should be attached together. *Gage v. Brown*, 125 Ill. 552, 17 N. E. 754. If the answers be returned with the commission, every thing else showing regular, they may be used as evidence, though not attached to the commission. *T. & P. R. Co. v. Walker*, 60 S. W. 796.

A deposition returned without the signature and endorsements on the outside of the envelope required by statute, should be suppressed. *Barber v. Greer*, 94 Tex. 584, 63 S. W. 934.

3. *Thomas v. Wheeler*, 47 Mo. 363; *Moss v. Barth*, 34 Mo. 316; *Boykin v. Smith*, 65 Ala. 294; *Hill v. Hill*, 42 Pa. St. 198.

notice or commission states the time and place of taking the deposition, the notary should summon the witness to appear before him at the time and place mentioned; and his certificate should state when and where the deposition was taken.⁴ If from sickness or any unavoidable cause the witness can not attend, or the notary can not take the deposition at the time specified, he should state in his certificate fully the diligence used and the reason for the delay in taking the deposition.⁵

The name of the witness and (when the officer is named in the commission), the name of the officer should appear

4. The notice stated the place for taking the deposition as the office of "Squire Moore." The certificate showed that it was taken at the office of Enos Moore; *held*, that the deposition was inadmissible. *McClintock v. Crick*, 4 Iowa, 453 See, also, *Wannock v. Macon*, 53 Ga. 162. But depositions will not be suppressed because taken at a different place from the one named in the notice, if taken in the presence of both parties or the representatives. *Gartside Coal Co. v. Maxwell*, 20 Fed. Rep. 187. A certificate stating that the deposition was taken at the time and place designated in the commission is sufficient. *Faucher v. Armstrong*, 5 Ark. 187; *Whittaker v. Voorhees*, 38 Kan. 71, 15 P. 874; *Dye v. Bailey*, 2 Cal. 383; *Dawson v. Dawson*, 26 Neb. 716, 42 N. W. 744.

5. The taking of the deposition should be commenced on the day specified in the notice. *Fox v. Carlisle*, 3 Mo. 197. When the taking of the deposition covers more than one day, or is postponed from day to day, the officer should keep his record showing what was done on each day. *Ex parte Green*, 126 Mo. App. 309, 103 S. W. 503. If the officer, of his own motion and over objection, adjourns over a day on which he could have taken testimony, he is without authority to proceed further in the matter. *Ex parte Green*, 86 Mo. App. 216. If defendant's agent is present and makes no objection to postponement he can not afterwards be heard on motion to quash because of the adjournment. *M. K. & T. Ry. Co. v. Williams*, Tex. Civ. App. 96 S. W. 1087. The deposition of one of the witnesses was taken on the day appointed; another witness could not attend on account of being under process to attend elsewhere; *held*, proper to adjourn and take the testimony of the other witness the next day when he could attend. *Andrews v. Jones*, 10 Ala. 460.

in the signing of the depositions or the official certificate, the same as in the commission. If the name be merely misspelled in the commission, it is immaterial, but if the wrong initials are used, or the name so misspelled as to make it a different name, the commission and interrogatories should be returned to the clerk or the party sending them, with an explanation so that the correction can be made before the depositions are taken.⁶

6. The commission was addressed to Barham; The officers' name was Basham; *held*, the variance was fatal, and the deposition should have been suppressed. *Kirk v. Suttle*, 6 Ala. 679. Cory and Cary, were held *idem sonans*; that is, to be the same name. *Bibb v. Allen*, 149 U. S. 481, 37 L. Ed. 819. The certificate should show full compliance with the commission. *Connellie's Succession*, 6 La. Ann. 479; *Hamberger v. Alexander*, 11 Utah, 363.

NAMES OF WITNESSES:—The names of witnesses whose depositions are to be taken should be specified in the notice, and if depositions of persons not named are taken, they should be suppressed. *Strayer v. Willson*, 54 Iowa, 565. The parties agreed that the deposition of S. M. K. should be taken. The notary took and returned the deposition of Sally E. McK.; *held*, that it was inadmissible. *Glenn v. Gleason*, 61 Iowa, 28. See, also, *McCoy v. People*, 71 Ill. 111; *Field v. Tenny*, 47 N. H. 513, 77 Am. Dec. 780.

Notice was given for taking the depositions of Patrick Horan. The notary took and returned the depositions of James Horan; *held*, that the depositions were properly excluded. *Patterson v. Wabash*, etc., R. Co., 54 Mich. 91; *Scholes v. Ackerland*, 13 Ill. 650. The certificate to the depositions of A. B. Smith and C. D. Smith gave the names as A. B. and C. D. Smith; *held*, sufficient. *Adams v. Flannigan*, 36 Vt. 347.

A mistake in the Christian name is not fatal if it can be corrected from the whole deposition, *Kendall v. Limberg*, 69 Ill. 355, and when the name of the officer was written "Stormer" in the place of "Stenner" *held*, not fatal. *Green Co. v. Bledsoe*, 12 Ill. 267. "Lewis" and "Louis" were held to be the same name in *Man v. Wetzel*, 3 Colo. 2; *Man v. Birchard*, 40 Vt. 326, 94 Am. Dec. 328. A deposition signed Emily A. P. when the notice given was for the deposition of Mrs. I. V. P.; *held*, Emily A. P. being the wife of I. V. P. and this being known to both parties, the deposition was properly admitted. *Kent v. Buck*, 45 Vt. 18.

Sec. 147.—Manner of taking depositions.—

In ARKANSAS, KANSAS, MISSOURI, OKLAHOMA AND TEXAS, and in many of the other states, depositions may be taken in either of two ways:

1. By notice given to the adverse party.
2. Under a commission issued by the clerk of the court in which the suit is pending. The commission may be issued specially to some person or officer agreed upon by the parties and named in the commission, or it may be directed generally to any notary public, or other officer, within the county where the witness resides, who is authorized to take depositions.

Sec. 148.—Taken under notice given.—

When depositions are taken under notice, the parties, their agents or attorneys appear at the notary's office at the time specified, and examine the witness orally before him. It is the duty of the notary to reduce the testimony of the witness to writing, or to have the witness write the same down in his presence. In Arkansas and Missouri, he must pass on all objections as to the admissibility of the testimony, but in cases of doubt he should state the question

A commission was issued to take the depositions of persons named as follows: William Smith, James Willis, Henry Dunsmore, Ellen Duffield, Henry Gibson, Joseph Clark, Alaxander Robson, and Mahalele Elliott. Under the commission the notary took the depositions of William P. Smith, James Millis, Ellen Duffield, Harvey Gipson, Henry C. Dunsmore, Mahal Elliott, Alaxander M. Robertson, and Joseph C. Clark. On motion to suppress, the court said: "We understand the rule to be that the law recognizes but one Christian name," and the motion was on that ground overruled as to William P. Smith, Henry C. Dunsmore and Joseph C. Clark. It was overruled as to Ellen Duffield because Ellen and Ellin are the same name, but was sustained as to James Millis, Harvey Gipson, Mahal Elliott and Alaxander M. Robertson, the court holding that these names were not the same names mentioned in the commission. *Strayer v. Willson*, 54 Iowa, 565, 37 A. M. Rep. 216.

and answer and the objection made, and let them go in with the rest of the deposition to be passed upon by the judge trying the cause.

In Missouri, he must at the request of the party against whom he rules, state the question, the objection and his ruling thereon, and submit the same to the judge trying the cause

The laws of Kansas and Oklahoma make no provision as to the officer, taking depositions, ruling upon the admissibility of the testimony, or other objections thereto, but the complied laws of Oklahoma, sec. 5884, provide that no exception to depositions, other than for incompetency or irrelevancy, shall be regarded unless made in writing and filed before commencement of the trial; this indicates that, the court trying the case passes on the admissibility of the testimony, and that the officer taking the depositions has no authority to hear objections or make rulings in regard to the admissibility of the testimony.

In Texas, the act of 1907, providing for the taking of depositions, by notice in answer to oral questions, expressly provides that the officer taking the deposition shall not rule on objections to questions or answers, but, when objection is made he shall write down the question, the answer and the objection, and send them in with the depositions to be passed on by the court trying the case. In taking depositions in this manner it is desirable to have both parties present, but after the time mentioned in the notice arrives, if one party appears, the notary is under no obligation to wait for the other party to appear. The witnesses should all be sworn to tell the truth, the whole truth and nothing but the truth, in answer to the questions, or interrogatories propounded to them.

Sec. 149.—Taken under commission.—

When depositions are taken under commission, interrogatories are propounded in writing, by the party desiring

the depositions, and filed with the clerk of the court where the suit is pending. Cross-interrogatories are filed by the opposite party if he desires to ask any questions. These, together with the commission, are sent to the notary. If the commission specifies the time and place of taking the depositions, the notary should summon the witness or witnesses to appear before him at the time and place specified. The notary conducts the examination by reading the interrogatories to the witness and reducing his answers to writing, or causing the witness to write them in his presence. Neither party nor his attorney is entitled to be present during the examination of the witness, unless by agreement both parties or their attorneys are present.⁷

Sec. 150.—Subpoena—Definition.—

A subpoena is a writ commanding the person to whom it is directed to appear and testify at a specified time and place. When it contains a clause directing the witness to bring with him any book, writing or other thing under his control, it is called a subpoena *duces tecum*.⁸

Sec. 151.—Notaries may issue subpoenas.—

Under the laws of Arkansas, Kansas, Missouri, Oklahoma and Texas notaries are authorized to issue subpoenas for witnesses whose depositions they are required to take. The style of the subpoena should be, "The state of (here name the state)". In Arkansas and Texas it should be addressed to the sheriff or any constable of the county where the witness resides. In Kansas, Missouri and Oklahoma it should be addressed to the witness or witnesses for whom it was issued. (For forms see sec. 188a.)

7. Bouvier's Law Dict.; Scott v. Shields, 8 Cal. App. 12, 96 P. 385; Burns v. San Francisco Sup. Ct., 140 Cal. 1, 73 P. 596; Alaxander v. Harrison, 2 Ind. App. 47, 28 N. E. 119.

8. Bouvier's Law Dict.; Jackson v. Motley, 157 Ala. 408, 47 So. 590.

Sec. 152.—By whom served.—

In ARKANSAS, KANSAS and MISSOURI a subpoena may be served by the sheriff, coroner or any constable of the county. In Texas by the sheriff or any constable of the county in which the witness resides. In Arkansas the subpoena may be served by showing it to the witness and stating to him its substance. In Kansas, Missouri and Oklahoma it may be served either by reading it to the witness or by delivering him a copy, or in Oklahoma, if the witness should not be found, by leaving a copy at his residence. In Texas it is served by reading it to the witness.

Sec. 153.—Witness fees.—

In civil cases before the witness can be compelled to attend, he must be tendered his fees and mileage for one day's attendance. In Missouri, when he lives less than forty miles from the place where he is required to appear, it is not necessary to tender his fees.

Sec. 154.—When subpoena should be served.—

The service of a subpoena ought to be made in a reasonable time before the taking of depositions. At least one day's notice should be given, however inconsiderable the distance may be, in order to enable the witness to put his affairs in such order that his attendance may be as little detrimental to his interests as possible. When he resides at a distance he should be allowed sufficient time to reach the place to which he is summoned, at the specified time, by starting the day after he is served, and traveling by the usual route.⁹

Sec. 155.—Return of the subpoena.—

The officer serving the subpoena should make a written return on the same and return it to the notary. The return should show how the subpoena was served, and whether or

9. Greenleaf on Evid., sec 314.

not the fees were tendered by the officer; and in Missouri, if the witness resides a greater distance than forty miles, the return should state how far he resides from the place where he is required to attend.

Sec. 156.—Writ of attachment, when issued.—

If a witness fails or refuses to obey a subpoena the notary may issue a writ of attachment, to any peace officer of the county, commanding him to arrest the witness and bring him before the notary, or to have the witness give bond with good and sufficient sureties conditioned that he will appear before the notary at the time and place mentioned in the attachment

Notaries should be careful to ascertain before attaching a witness, whether or not the law has been complied with in reference to service and payment of fees. They should, moreover, require the party on whose behalf the attendance of the witness is desired, or his attorney, to make an affidavit showing the materiality of the testimony of the witness.

Sec. 157.—Nonattendance of witness—contempt.—

When a witness without good cause fails to obey a subpoena, the notary may punish him for contempt. In Arkansas the punishment may be by fine not to exceed thirty dollars, or imprisonment not exceeding five days. In Kansas and Missouri the punishment is by fine not exceeding fifty dollars. In Oklahoma, punishment for nonattendance is by fine not exceeding fifty dollars; punishment, for refusal to be sworn or to testify may be by fine not exceeding fifty dollars; or the officer may commit the witness to jail there to remain until he is willing to be sworn or to testify, but justices of the peace and notaries public, unless acting as commissioner for the district court, can not punish witnesses for contempt. In Texas punishment is by fine not exceeding one hundred dollars or imprisonment not exceeding three days, or by both such fine and imprisonment.

Sec. 158.—Judgment of contempt.—

If it becomes necessary to punish a witness for contempt, for disobeying a subpoena, the notary should enter against him a judgement *nisi*, that is a conditional judgment, adjudging him guilty of contempt, unless he shall appear and show cause why he should not be found guilty; and then cite the witnesses to appear on a certain date (giving him a reasonable time) to show cause, if any he has, why the judgment should not be made final. If the witness appears and shows good excuse for his nonattendance, he should be discharged, but if he fails to appear, or having appeared, fails to show reasonable excuse for his non-attendance, the notary should enter an order making the judgment finding him guilty of contempt final, and assess his punishment at a fine or imprisonment as he may deem adequate and just, not to exceed the punishment above mentioned.

For refusing to be sworn or to testify, the witness may be summarily punished, that is punished without notice; but in all cases an order should be entered by the officer in his record adjudging the witness in contempt, including a statement of in what the contempt consisted, and the punishment assessed against him.¹⁰

The order should state the disobedience of the witness and contain a finding, or holding of contempt for such disobedience. 8 Ohio N. P. 241.

A notary has no authority to punish a party to the suit for refusing to answer. *Ex parte Johnson*, 54 Tex. Cr. Rep. 113, 111 S. W. 743.

Sec. 159.—Refusing to be sworn, or testify.—

Witnesses may be punished for contempt for willfully refusing to be sworn or to testify. If the witness has conscientious scruples as to being sworn he should be allowed

10. In *re Merkel*, 40 Kan. 27, 19 P. 401; *ex parte Munford*, 57 Mo. 603; *Keller v. Goodrich Co.*, 117 Ind. 556, 19 N. E. 196, 10 A. S. R. 88.

to affirm. If he refuses to answer a question he should be examined as to his reason for such refusal, to see if he comes under any of the statutory exceptions named in the preceding section, if he does not the officer should insist on his answering the question, and, if he still refuses to do so, he should adjudge him in contempt and punish him therefor, keeping the penalties assessed within the limits mentioned in sec. 157. A general refusal to testify, is not sufficient to justify proceedings for contempt. The witness should have read to him or be asked a specific question.¹¹

Sec. 160.—Witness refusing to answer—personal privilege.

If a witness refuses to answer a question the notary may punish him by fine or imprisonment for contempt, unless the question is one that the law does not require him to answer and he pleads his personal privilege. And herein it will be well to consider the privileges of the witness.

Sec. 161.—When the answer would criminate the witness or the witness' husband or wife.—

No person can lawfully be compelled to answer a question if the answer would expose the witness (or the husband or wife of the witness) to any criminal charge or to a forfeiture of his or her estate. The rule is not confined to cases where the answer would of itself be sufficient to convict. If it would disclose a fact forming a necessary and essential link in a chain of testimony sufficient to secure a conviction, the witness is not bound to answer.¹²

11. The witness made a general statement that upon the advice of counsel he would answer no question. Such statement was insufficient to justify a commitment for contempt. He should have been asked, and given opportunity to answer, specific questions. *Ex parte Green*, 126 Mo. App. 309, 103 S. W. 503. When a witness refuses to answer specific questions, because his counsel told him to not answer them, it is proper for the notary, after explaining to him that he must answer them, to commit him for contempt. *In re Merkel*, 40 Kan 27, 19 P. 401.

12. *Wharton on Evid.*, sec. 533-4; 1 *Greenleaf on Evid.*, Sec. 451; *State v. Bach Liquor Co.*, 67 Ark. 163, 55 S. W. 854; *Stephens v. State*,

It is for the witness to decide what his answer will be; and if he can say on his oath that "he can not answer without accusing himself," he can not be compelled to do so. The witness can not be required to explain fully how he might be criminated by the answer. It is, however, the province of the officer taking the deposition to decide whether *any direct answer* to the question would furnish evidence against the witness (or the husband or wife of the witness), and if, in the officer's opinion, it would not, he should overrule the witness' demurrer.¹³ A witness can not claim such privilege on the ground that his testimony would disgrace him, it is only when his testimony might subject him to a criminal prosecution that he may claim the privilege of not testifying; so if the witness has been pardoned for the offense about which he is called upon to testify, or if it is barred by the statute of limitations, or if the statute provides that in case he testifies about the matter he shall not be prosecuted, he may be compelled to testify;¹⁴ and if a witness, knowing his privilege waives it, and begins to testify he can not refuse to complete the narrative on the ground that he might incriminate himself.¹⁵

Sec. 162.—Confidential communications—husband and wife.—

The statutes of Arkansas and Kansas, provide that the husband and wife shall be incompetent to testify for or against each other, concerning any communication made by the one to the other during their marriage, whether called while that relation subsists or afterwards. The statute of

50 Kan. 712, 32 P. 350. The same rule applies to cases of contempt. In re McKenna, 47 Kan. 738, 28 P. 1078.

13. Ward v. State, 2 Mo. 120.

14. Greenleaf on Evid., sec. 451a. In re Bell, 69 Kan. 885, 76 P. 1129; State v. Jack, 69 Kan. 387, 76 P. 911; affirmed in 199 U. S. 372, 50 L. Ed. 234; ex parte Hedden, 29 Nev. 353, 90 P. 737.

15. 1 Greenleaf on Evid., sec. 451; State v. Wells, 54 Kan. 161, 37 P. 1005; Ex parte Hedden, 29 Neb. 353, 90 P. 737.

Arkansas, further provides that either shall be allowed to testify for the other, in regard to any business transacted by the one for the other in the capacity of agent.¹⁶ The statutes of Missouri provide that a married woman may testify in all cases to which she is a party. She is also a competent witness in actions by or against her husband (1) in actions upon policies of insurance, upon property, so far as relates to the amount or value of the property alleged to have been injured or destroyed; (2) in actions against carriers, so far as relates to the loss of property and the amount and value thereof; (3) in all matters of business transactions, when the transaction was had or conducted by such married woman, as the agent of her husband, and that a married man is a competent witness in any suit in the name of or against his wife as to any business or transaction conducted by him, as agent of his wife, but in no case is a married woman a competent witness, as to the confidential communications between herself and her husband, whether called as a witness while the relation exists or subsequent thereto.¹⁷ The statute of Oklahoma provides, that the husband and wife are incompetent to testify, for or against, each other, except concerning transactions in which one acted as agent of the other, or when they are joint parties and have a joint interest in the action; but in no case shall either testify, as to confidential communications between them, whether called as a witness while the relation subsists or afterwards.¹⁸ In Texas, the husband or wife is a competent witness in any suit or proceeding to which either is a party, except as to confidential communications between them.¹⁹

Sec. 163.—Attorney and client.—

Attorneys are privileged to refuse to testify concerning any communication made to them by their clients, or their

16. Kirbys' Dig. Ark. sec. 3095.

17. R. S. Mo., sec. 6354, 6359.

18. R. L. Okla. sec. 5050.

19. R. S. Tex. art. 3689.

advice thereon, and clients are also privileged from testifying as to the advice given them by their attorneys; neither can an interpreter be compelled to testify as to the communication between attorney and client. In Texas, an attorney can not be compelled to testify to any fact that has come to his knowledge, by reason of his employment.²⁰ When such communications are written instruments, such as deeds, notes, etc., they can not be compelled to introduce them, and if such instruments are deposited with an attorney for the purpose of procuring his advice, he can not be compelled to testify as to their condition or contents. It is not necessary that a judicial proceeding should have been commenced, or that any fee should have been paid to the attorney, or that he should be subsequently employed, in order to bring such communications within the rule; and when two adverse claimants go to the same attorney for advice he can not be compelled to testify as to communications made by either.²¹

An attorney can not, on the ground that it is a privileged communication, object to testifying as to—

(1) Any communication made to him as legal adviser, in furtherance of any criminal purpose; because, when an attorney takes part in preparing for a crime, he acts as a criminal and not as a lawyer.²²

20. *Fox v. Speer*, 78 Ark. 71, 93 S. W. 560; *Tays v. Carr*, (Kan.), 14 P. 456; *In re Huffman Estate*, 132 Mo. App. 44, 111 S. W. 848; *State v. Dawson*, (Mo.) 1 S. W. 827; *Rosebud v. State*, (Tex. Cr. Rep.), 98 S. W. 858.

21. It is immaterial that no fee has been paid. *Sergeant v. Hampton*, 38 Me. 581; *Davis v. Morgan*, 19 Mont. 141. Not necessary that a judicial proceeding be commenced. *Greenleaf on Evid.*, vol. 1, sec. 240; *Denver T. Co. v. Owens*, 20 Colo. 107. Rule extends to communications with both parties when employed for advice by both. 1 *Greenleaf, Evid.*, sec. 240; *Harris v. Daugherty*, 74 Tex. 6, 11 S. W. 921, 15 A. S. R. 812.

22. 1 *Greenleaf on Evid.*, sec. 242; *Hickman v. Green*, 123 Mo. 165, 22 S. W. 455; *Taylor v. Evans*, 29 S. W. (Tex. C. A.) 172; *Orman v. State*, 22 Tex. App. 617, 3 S. W. 468, 58 Am. Rep. 662.

(2) Any fact observed by him in the course of his employment as attorney showing that any crime or fraud has been committed since the commencement of his employment, or any communication seeking advice in regard to the perpetration of a fraud.²³

(3) Any fact with which he becomes acquainted otherwise than in his character as legal adviser.²⁴

(4) Who employed him to act in his professional capacity in a case, and as to the capacity in which the person acted who employed him.²⁵

(5) The fact that he drew up a will or other document, and that it was duly executed.²⁶

(6) The fact that title deeds or other documents about which he has been consulted are in existence, and as to their whereabouts; but not as to their contents.²⁷

(7) Any communication made to him by a person against whom he was acting in his professional capacity, though he has usually acted as such person's legal adviser.²⁸

Sec. 164.—Ministers of the gospel, physicians, etc.—

Under the common law communications confidentially made to ministers of the gospel, priests, physicians or surgeons are not privileged. They may be compelled to testify in regard to such communications. In Texas this rule remains unchanged. But in Arkansas, Kansas, Missouri and Oklahoma it has been provided by statute that ministers of the gospel and priests may not be compelled to testify concerning a confession made to them in their professional character, in the course of discipline enjoined by the rules

23. *Hyman v. Grant*, 102 Tex. 50, 112 S. W. 1042; *Matthews v. Hoagland*, 48 N. J. Eq. 455, 21 Atl. 1054.

24. *Titus v. Johnson*, 50 Tex. 224; *Flack v. Neill*, 26 Tex. 273.

25. 1 *Greenleaf*, sec. 245.

26. *Graham et. al. v. Fallon*, 4 Mo. 338.

27. *Johnson v. Sullivan*, 23 Mo. 474; *Zabol v. Schroeder*, 33 Tex. 308.

28. *Wilson et al v. Goodlove*, 34 Mo. 337.

of his church, unless the person making such confession consent that it be testified to; and that a physician or surgeon or trained nurse may not be compelled to testify concerning any information which he may have acquired from any patient while attending him in a professional character, which is necessary to enable him to prescribe for or perform any operation upon such patient, or properly nurse or care for him.²⁹

Sec. 165.—Statutes strictly construed.—

The statutory provisions on this subject, abrogating, as they do, the common law should be construed strictly. If, on the one hand, the confession was not made to the priest or the preacher, "in his professional character, in the course of discipline enjoined by the rules of practice of his denomination, or if, on the other, the information acquired by the physician or surgeon, or trained nurse, was not necessary to enable him to prescribe for, operate upon or nurse such patient; or was not obtained by personal examination of such patient, or through a communication made to him, by his patient, with reference to some physical or supposed physical disease, the confession made to the priest or preacher, or the information obtained by the physician or surgeon or trained nurse, would not come within the rule."³⁰

29. Kirby's Dig. Ark. sec. 3095; R. S. Mo. sec. 6359; R. L. of Okla. sec. 5050. Druggists do not come within the rule as to physicians, and may be compelled to testify what medicines they have furnished. *Brown v. Hannibal & St. Joe. R. R. Co.*, 66 Mo. 588.

30. A physician was called to see a patient, afterwards the family physician took charge of the case, within a few hours, the physician first employed called again, when a statement was made by the patient to him as to the cause of the injury, held, to be a privileged communication. *E. Patterson and Son v. Cole*, 67 Kan. 441, 73 P. 54. A statement made by a girl to her physician as to the time of her first act of intercourse with the defendant, is admissible. *Clark v. State*, 8 Kan. 482, 61 P. 814.

A physician can not be compelled to testify, as to the diagnosis of plaintiff's case, as shown by records kept by him. *Smart v. Kan-*

Sec. 166.—Secrets of state.—

No person can be compelled to give evidence relating to any affairs of state, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned. And no one who has been employed to collect evidence for the use of the government can be compelled to disclose the name of his employer, or the nature of the connection between them, or the name of any person through whom he communicated with the government, or its officers, nor whether or not the government has received the information. He may, however, be asked whether or not the person to whom the information was communicated is a magistrate. (Stephens Dig. of the Law of Ev. 112; 1 Greenleaf on Ev. Secs. 250, 251.)

Sec. 167.—Answers which would needlessly degrade the witness' character.—

Where the answer to a question will not expose a witness to a criminal prosecution or penalty, but will directly and certainly degrade his character, he is, as a general rule,

sas City, 105 S. W. (Mo.) 709. Information, acquired by a physician by observation of his patient, is privileged. *Smoot v. Kansas City*, 194 Mo. 513, 92 S. W. 363.

A statement by a patient, as to the position he was in, when the injury occurred is admissible. *Green v. Terminal Association of St. Louis*, 211 Mo. 18, 109 S. W. 715.

It was admissible for plaintiff's physician to testify that, upon one occasion when at her house, she was walking about and that she went up stairs without crutches. *Chlanda v. St. Louis Transit Co.*, 213 Mo. 244, 112 S. W. 249.

A notary, who is also a priest, may testify in regard to communications made to him as a notary. *Partridge v. Partridge*, 220 Mo. 321, 119 S. W. 415. In order to make a statement to a minister of the gospel inadmissible, it must be made to him in his professional capacity, and in the course of discipline enjoined by the rules of practice of his denomination. *State v. Morgan*, 196 Mo. 177, 95 S. W. 402.

privileged to refuse to answer, except where the question calls for evidence relevant to the facts in issue.

The facts in issue in an action are those which, by the form of the pleadings, are affirmed on one side and denied on the other.

It is impossible to give a satisfactory definition of relevancy within the compass of a few lines, but, generally speaking, any answer should be held relevant to the facts in issue if it shows or tends to show that any such fact must or can not have occurred, or probably does or did exist, or not.

There are these exceptions to the rule above stated, as to witnesses not being compelled to give answers degrading their characters.

A witness may be compelled to answer any question put during his cross-examination, however irrelevant it may be to the facts in issue, which tends:

- (1) To test his accuracy, veracity or credibility; or
- (2) To shake his credit by injuring his character.

When a witness objects that an answer will, if given, degrade him, the notary taking his deposition should see for himself that the answer will directly show the witness' infamy before excusing him from giving it. The fact that the answer will *tend* to degrade him is no excuse.

Inasmuch as it is almost impossible for an officer taking depositions to decide whether or not a question will be relevant to the issues in the case as they will appear at the time it is tried, and as it is with reference to those issues that questions of relevancy must be decided, a witness should not be allowed to refuse to answer on the plea that the answer will disgrace him, except in a very plain case of impertinence.

A witness may waive his privilege in a case of this kind, just as he may where the answer will criminate him.³¹

31. Ex parte Gfeller, 178 Mo. 248, 77 S. W. 552; Holloway v. Kansas City, 184 Mo. 19, 82 S. W. 89.

Sec. 168.—Taking advantage of privilege.—

The privilege of refusing to answer is that of the witness, and he must make the objection. He can not take advantage of an objection made by a party litigant. In making the objection the witness should always be required to state why he is privileged to refuse to answer, so that the officer taking his depositions may pass upon the objection intelligently, it being for such officer, and not for the witness, to decide whether or not any question put calls for evidence which the witness is privileged to refuse to give.³²

Sec. 169.—Refusing to answer a question because irrelevant or incompetent.—

A witness whose deposition is being taken stands in the same position as an ordinary witness, subject to the same rules of examination prevailing at common law, except where such rules have been modified or changed by statute. "The fact that his testimony is being taken by deposition, and not in open court, does not create a peculiarity in this respect." A witness can never, in open court, object to a question because it is irrelevant or incompetent, nor has he a right to object to such a question when his deposition is being taken.

When one party is examining a witness, the adverse party, and he only, can object to a question as incompetent or irrelevant. Where such an objection is made by the proper party, the notary should first note the objection and then take the answer of the witness.

The opinion of the witness that the question is irrelevant is entitled to no consideration, and officers authorized to take depositions have generally no authority to pass upon questions of relevancy and competency. An exception to this rule is made in Missouri in cities of over fifty thousand

32. Starkie on Evid., sec. 214; 1 Greenleaf on Evid., sec. 451; 1 Wharton on Evid., sec. 539; Hull v. Lyon, 27 Mo. 570; Ehrhardt v. Stephenson, 128 Mo. App. 476, 106 S. W. 1118.

inhabitants. All such questions must be reserved for the court in which the case is pending, to pass upon at the trial. They must be decided with reference to the condition of the case at that time, and not at the time when the deposition is taken. It is impossible for an officer taking a deposition in a case to decide questions of relevancy and competency properly, because even if the issues are framed when it is taken they may be wholly changed before it can be used at the trial. Where, however, the question is evidently asked for a purpose not contemplated by the litigation, the witness should not be compelled to answer. A witness can not object because a question is irrelevant.³³

Sec. 170.—Statutory provisions as to contempt.—

ARKANSAS.—The statutes of Arkansas provide that when a witness refuses to be sworn or refuses to answer as a witness, or to subscribe an affidavit or deposition when lawfully ordered, he may be punished for contempt, by fine not exceeding thirty dollars, or by imprisonment not exceeding twenty-four hours, or by both such fine and imprisonment. In case of the refusal of a witness to be sworn, or to testify, the imprisonment may continue until he is willing to testify.

KANSAS.—The statutes of Kansas provide that if a witness refuses to be sworn, or to testify, or to subscribe his deposition, when lawfully ordered to do so, he may be punished for contempt by the court or officer by whom his testimony is required, by fine not to exceed fifty dollars, or by imprisonment in the county jail there to remain until he is willing to be sworn, testify or subscribe his deposition.

MISSOURI.—The statutes of Missouri provide that a person, who has been summoned as a witness, and refuses to give evidence, which may lawfully be required to be given by him, may be committed to prison by the court or officer

33. Ex parte Krieger, 7 Mo. App. 367; Ex parte Priest, 76 Mo. 229; Ex parte McKinzie, 1 Pa. L. J. Rep. 356.

taking his deposition, there to remain without bail until he is willing to testify.

OKLAHOMA.—The statutes of Oklahoma provide that the district, county or probate court, or a commissioner of the district court, may compel a witness to attend and testify and, in case of refusal may punish him by imprisonment until he does attend and testify; that a clerk of the court, justice of the peace or notary public, may take depositions when the witness appears and testifies voluntarily, but the last named officers. can not compel the attendance of a witness nor punish him for contempt.

TEXAS.—The statutes of Texas provide that when a witness shall refuse to answer interrogatories propounded to him, the officer, before whom he has appeared, may punish him for contempt by fine not to exceed one hundred dollars, and by imprisonment not to exceed three days.

Sec. 171.—The caption.—

The notary taking the deposition, either under commission or by notice and oral examination, should write above the deposition, or answers of the witness, an appropriate caption, in which he should state the number and style of the suit, the court in which it is pending.³⁴ The name or names of the witness or witnesses whose depositions have been taken,³⁵ when, where and be-

34. A recital, that the deposition was taken in accordance with the annexed commission, is insufficient. The number and style of the case should be stated either in the caption or the certificate. *Slaughter v. Rivenbark*, 35 Tex. 68; *Southern Pac. Ry. Co. v. Royal*, 23 S. W. 316 (Tex. Civ. App.); *Plimpton v. Summerset*, 42 Vt. 35; *Haskins v. Smith*, 17 Vt. 263.

A caption naming the city and county in which the court sits, when the state is apparent from the whole certificate, is sufficient, though the state be not named in the caption. *Spaulding v. Robbins*, 42 Vt. 90; *Chandler v. Speer*, 22 Vt. 388.

35. *Amick v. Haleman*, 71 Mo. 445; *Emberson v. McKenna*, 16 S. W. (Tex. C. A.) 419; *Braley v. Braley*, 16 N. H. 408; *Lund v. Dows*, 41 Vt. 370.

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fore whom the depositions were taken, at whose request they were taken and whether under commission or notice.³⁶ (For forms see secs. 192-197).

Sec. 172.—Writing down testimony.—Oral examination.—

When depositions are taken under notice and oral examination, it is the better practice to write down both the question and answer, though unless the parties, or one of them ask that the questions be written down, it is not absolutely necessary to write them, except in Missouri. The statute of that state requires that the questions and answers both be written down.³⁷

Written Interrogatories.—When the examination is upon written interrogatories, the interrogatories need not be copied by the officer with the answers. The answers should be numbered in accordance with the numbers of the interrogatories.

The testimony may be written down by the officer, by the witness, or by any disinterested person at the request of the officer;³⁸ but it is improper, for a party to the suit or

36. Caption should show time and place of taking deposition. *Fancher v. Armstrong*, 5 Ark. 187; *Dye v. Bailey*, 2 Cal. 383; *Dawson v. Dawson*, 26 Neb. 716, 42 N. W. 744; *Dunham v. Halloway*, 2 Okla. 78, 35 P. 949. Caption should show at whose request deposition was taken. *Wells v. Fish*, 3 Pick (Mass.) 74.

If the commission requires it, the caption should also show that the notary is not interested in the suit in which the testimony is taken, and that he is not an agent of or attorney for any party to the suit *Bickley v. Bickley*, 136 Ala. 548, 34 So. 946; *Wilson v. Smith*, 5 Yerg. (Tenn.) 379; *Gartside Coal Co. v. Maxwell*, 2 Fed. 187.

37. When taken on oral questions, if the answers or testimony is written, in full, this is sufficient. *Chippewa Bank v. Asheville Bank*, 116 N. C. 815, 21 S. E. 688.

38. May be written by the witness. *Missouri, etc., R. Co. v. Denton*, 68 S. W. (Tex. Civ. App.) 336; *Wood v. Shaw*, 38 Ill. 273; *Fisk v. Tank*, 12 Wis. 276, 78 Am. Dec. 737. Testimony may be written, by disinterested person, at request of the officer. *Tuthill v. Smith*, 90 Iowa, 331, 57 N. W. 853; *Cushman v. Wooster*, 45 N. H.

his attorney, to write down the testimony.³⁹ It should be written with ink, or type written, writing the answers with lead pencil is insufficient.⁴⁰

Sec. 173.—Stenographer.—

The notary or officer taking the deposition may appoint, or request, a stenographer to take the testimony of the witness in short hand,⁴¹ but, it must be transcribed into long hand and be examined by or read over to the witness, before it is subscribed by him in order to be admissible as his deposition.⁴² In Arkansas the stenographer must be sworn by the notary to correctly write and transcribe the testimony of the witness (Castle's Supplement, Ark. sec. 3185a).

(For form of oath to stenographer see sec. 114.)

410; *Crassgrove v. Himmelrich* 54 Pa. St. 203; *Bell v. Morrison*, 1 Pet. 371, 7 L. Ed. 174.

39. It is improper to allow a party to the suit or one of the attorneys, without the consent of all parties, to write down the testimony, and, if objected to, a deposition so written will not be admitted. *Crittenden v. Woodruff*, 11 Ark. 82, *King v. Dale*, 2 Ill. 513; *Snyder v. Snyder*, 50 Ind. 492; *Hurst v. Larpin*, 21 Iowa, 484; *Mosely v. Mosely*, 1 N. C. 568; *Wertz v. May*, 21 Pa. St. 274; *Burgess v. Grafton*, 10 Vt. 321.

40. Deposition should be written with ink, writing with lead pencil is insufficient. *People v. White*, 22 Wend. (N. Y.) 167. Written with a typewriter is sufficient. *Behrensmeyer v. Kreitz*, 135 Ill. 591; 26 N. E. 704; *Stoddard v. Hill*, 38 S. C. 385, 17 S. E. 138.

41. *Kyle v. Craig*, 125 Cal. 107, 57 P. 791; *Zehner v. Lehigh Coal Co.*, 187 Pa. St. 487, 41 Atl. 464, 67 A. S. R. 586; *Clark v. Manhattan R. Co.*, 102 N. Y. 656, 6 N. E. 111.

42. The testimony must be transcribed into long hand and read over to witness. *Moller v. U. S.*, 57 Fed. 490, 6 C. C. A. 459; *Shepherd v. Snodgrass*, 47 W. Va. 79, 34 S. E. 879.

Statutes of Iowa provide for appointment of stenographer, that he shall be sworn, to correctly take and transcribe testimony. *Slocum v. Brown*, 105 Iowa, 209, 74 N. W. 936.

Sec. 174.—What language used.—

In England, a deposition is not admissible if written in a foreign language. It must be written in English.⁴³ In the United States, it is customary for the notary to write the deposition in English using, when necessary, an interpreter to interpret the answer of a witness who does not speak English, but, it has been held that a deposition taken in a foreign language may be introduced in evidence, being interpreted into English, as it is introduced,⁴⁴ that such practice does not conflict with a provision of the constitution, requiring all judicial proceedings to be in English.⁴⁵

Sec. 175.—Interpreters.—

When a witness can not speak English or is deaf and dumb the notary may appoint an interpreter, who can converse with the witness, and swear him to truly interpret the questions to the witness and the answers of the witness.

The power to appoint interpreters, when necessary is expressly conferred by the statutes of Kansas and Texas.⁴⁶

This power is also incident to the office and conferred upon notaries by the common law independent of any statute and it is the proper practice in any of the states to appoint an interpreter when necessary.⁴⁷

43. *Belmore v. Anderson*, 29 Eng. Reprint, 793; *Fanquier v. Tynte*, 32 Eng. Reprint, 119

44. When witness can not speak English, deposition may be taken in the language he understands and can speak. *Cavasos v. Gouzalas*, 33 Tex. 133; *Christman v. Ray*, 142 Ill. App. 111; *Union Bank v. Reichmann*, 41 N. Y. Supp. 602.

45. The taking of a deposition in a foreign language is not inhibited by the constitutional requirement, that judicial proceedings be in English. *Christman v. Ray*, 42 Ill. App. 111.

46. G. S. Kan. sec. 5940; R. S. Tex. art. 3661.

47. *Davis v. Migliavaca*, 16 Tex. C. A. 42, 41 S. W. 91.

Power incident to office; *Field v. People*, 3 Ill. 79; *Campen v. Dewey*, 9 Mich. 381; *Amory v. Fellows*, 5 Mass 225.

Notary may himself interpret answers, when he understands the language of the witness, and transcribe the testimony in English.

Sec. 176.—Exhibits.—

When a document produced to the person or officer taking a deposition, is proved or referred to by the witness, it should be attached to or inclosed with the deposition, when it is completed, as an exhibit.⁴⁸ The officer taking the examination should, in all cases, mark the exhibit so as to identify it as the one referred to by the witness. The usual course is to mark the first one "Exhibit A," and so on, in alphabetical order.

When a document is to be made an exhibit to a deposition, the notary taking the examination should write immediately beneath the first answer in which the exhibit is referred to, a statement to the effect that it is made an exhibit to the deposition, and as to how it is marked, thus:

The document last above referred to is attached as an exhibit to this deposition and marked "Exhibit A."

Where the exhibits are small documents, it is best to attach them to the pages on which they are referred to; otherwise they may be all attached together, to the first page of the deposition.

Where several witnesses are examined, and all refer to the same exhibits, the exhibits should be attached to the first deposition taken, and should be referred to by counsel and witnesses, in the other examinations, as exhibits to the depositions to which they are attached.

Munk v. Weidner, 9 Tex. C. A. 491, 29 S. W. 409; *State v. Cardanis*, 47 Tex. 250; *Hartford Fire Ins. Co. v. Carrugi*, 41 Ga. 660.

48. *Crary v. Carradine*, 4 Ark. 216; *Atkins v. Greice*, 21 Ark. 164; *Reu v. Samos*, 33 Tex. 760, an exhibit not properly marked may be shown by other testimony to be the exhibit referred to. *Nicks v. Rector*, 4 Ark. 257.

Exhibits annexed to a deposition in one case, may be properly referred to and described in a deposition, in another case, and, they will be admissible, though the cases be between different parties. *Pope v. Anthony*, 29 Tex. C. A. 298, 68 S. W. 521.

Papers, attached to the petition or answer in a case, as exhibits, need not be attached to the deposition of a witness who refers to them.

Where a witness consults a memorandum in order to refresh his memory, but does not refer to it in his testimony, it is not necessary to attach it as an exhibit, though it has been held in Texas not to be improper to annex such a memorandum to an answer.⁴⁹

As a general rule, the original instrument should be made an exhibit, but where for any reason this can not be done, the witness should identify the instrument, if it is produced, or if only a copy is produced, he should identify the copy as being correct. In the latter case the copy should be made an exhibit; in the former, the officer should make a copy of the instrument and certify on the back thereof to its correctness, and attach it as an exhibit.⁵⁰

Sec. 177.—Adjournment.—

Notices to take depositions generally contain a statement to the effect that, if the examination is not finished on the first day, it will be continued over from day to day till completed. In case the notice does not contain such a provision, the taking of depositions can only be continued over from day to day by consent of parties.

If the parties to a suit agree orally to take depositions at a certain time and place, and, if the taking is not completed on the first day, that there may be adjournments from day to day, till all the desired depositions are taken, the depositions may be taken, and the taking adjourned from day to day, as though a written notice had been given.

49. Annexation of memoranda referred to will not vitiate the deposition. *Laugham v. Grigsby*, 9 Tex. 493. It is not necessary to annex memoranda referred to by the witness to refresh his memory. *Bailey v. Laws*, 3 Tex. C. A. 536, 23 S. W. 20.

50. *Talladega Bank v. Chaffin*, 118 Ala. 246, 24 So. 80; *Hanenstein v. Gillispie*, 73 Miss. 742, 19 So. 673, 55 A. S. R. 569.

It has been held that if the adverse party appears at the examination in person or by attorney, he waives notice; but whether such appearance, even though the adverse party cross examine the witness, would give a right, without consent, to adjourn the taking of the deposition to another day is doubtful.

The ARKANSAS statutes provide that in case, for any cause, a deposition can not be taken at the time or place mentioned in the notice, adjournment to other convenient place or time may be had.

When the taking of depositions is not completed on the first day the officer taking them should make an entry, when the examination is closed for the day, in which he should state that the adjournment is by consent of parties, or, if not by consent, he should state the reason for the adjournment.

If it should happen that there was more writing required than could be conveniently done in one day, that would be a good cause for continuing the examination till the next day, but due diligence should be used to take the deposition on the date named in the notice, as unnecessary delay might be a sufficient ground for suppressing the deposition.⁵¹

Depositions may be continued to any place, and until any time, that the parties may agree on. The above rules apply where there is no agreement.

Where the adjournment is by consent the following entry should be made by the notary taking the depositions when closing the examinations for the day:

I adjourn the further taking of depositions herein, by consent of all parties to the suit, till the — day of —, A. D. 19—, then to be continued at —, between the hours of — o'clock in the forenoon and — o'clock in the afternoon.

(SEAL.)

A. B., Notary Public.

51. *Kesskaden v. Grant*, 1 Kan. 33; *Brasken v. March*, 4 Mo. 74. See sec. 178.

When the adjournment is not by consent the entry should be in the following form:

Not being able to complete the taking of said depositions, by reason (here insert the reason), I adjourn the further taking of the same till to-morrow, then to be continued at the same place and between the same hours, named in the annexed notice.

(SEAL.)

A. B., Notary Public.

On the succeeding day the taking of the depositions should be commenced as follows:

Pursuant to adjournment, as above stated, on the — day of —, A. D. 19—, between the hours of — in the forenoon and — in the afternoon, at the —, I continue this taking of deposition as follows, viz.: — —, in continuance of his deposition, commenced yesterday, on his oath further says, etc.

If the examination of a witness is begun and is continued over till the next day, such witness need not be sworn again on the day to which the taking of his deposition is continued.

Sec. 178.—When parties agree on another day.—

Where the parties to a suit agree to begin the examination on some day subsequent to the one named in the notice, and notify the notary who is to take the depositions that they desire the taking of depositions to be adjourned till the day which they have agreed upon, he should make an entry substantially as follows:

I adjourn the taking of depositions in pursuance of the annexed notice, in the case now pending in the — court of the county of —, in the state of —, between — —, plaintiff, and — —, defendant, by consent of parties, from this — day of —, A. D. 19—, till the — day of —, A. D. 19—, then to be begun and taken at the same place, and between the same hours, mentioned in said notice.

[SEAL.]

A. B., Notary Public.

In such case the depositions when taken should be headed with the usual caption, except that it should begin:

“Depositions taken pursuant to adjournment, as above stated, of witnesses,” etc.

Where a notary receives a commission, accompanied by written interrogatories, authorizing him to take the depositions of witnesses therein named, he should proceed without unnecessary delay to summon the witnesses before him and examine them. When the examination is begun he may adjourn the taking thereof from time to time, and place to place, when any good purpose is to be subserved by doing so. The same strictness is not required in such cases which is necessary when depositions are taken under a notice. There should be no unreasonable delay, but the commissioner may, to a certain extent, consult his own and the witness' convenience.

The forms which have been given may be used as far as applicable.

Sec. 179.—Reading deposition to witness.—

When a deposition is taken, it is always the privilege of the witness to read it or have it read to him, before he signs it. In Arkansas, the statute requires this. The presumption is, however, that it is correctly written; and if the witness does not ask to have it read, the party against whom it is taken can not insist that it shall be, except where the statutes require it, and where deposition is taken orally, in an equity case, by an examiner appointed by the court wherein the case is pending.

Witness can not be compelled to sign his deposition until he reads or hears it read over.⁵²

Sec. 180.—Signing—by witness.—

When a deposition is completed, it should be signed by the witness.

The proper place for the signature is at the foot of the deposition, but if it plainly appears that the witness meant, by signing it, to assent to the contents of the deposition, it

52. *Anderson v. State*, 42 Ga. 9.

will be considered a sufficient signing under the statutes, no matter at what place the signature appears.⁵³

It is not necessary to have a witness sign that part of his examination which has been taken where the taking is adjourned before the examination is finished, but it is the more prudent course to have him do so inasmuch as the deposition might, if signed, be admitted in evidence in the case, if it could be made to appear that it was substantially finished and its completion was prevented by the death of the witness. If he is able, the witness should subscribe his examination, if unable to do so because of ignorance or weakness, he may request another to sign for him, and that will be considered a signing by himself. It is best in such cases to have the witness make his mark, if he is physically able, the name being written thus:⁵⁴

his
JOHN X SMITH.
mark

The name may be written by the officer taking the deposition.

If the witness can not make his mark and request any one to sign for him, his name should be written thus:

JOHN SMITH,
Per RICHARD ROE.

When the witness does not sign in the usual way, the officer should always state the reason for the irregularity in the jurat to the deposition or in the general certificate; and if the witness' name is signed by another person, he should so state and give such person's name.

53. *Moss v. Booth*, 34 Mo. 316. A witness signed his deposition at the close of his answers to direct interrogatories; the officer's certificate showed that he had signed and sworn to the entire deposition; *held*, that the deposition was admissible, though signed at the wrong place. *Missouri, etc. Ry. Co. v. Denton*, 29 Tex. C. A. 284, 68 S. W. 336; see also, *Moss v. Booth*, 34 Mo. 316.

54. One, not able to sign his own name, may get some one to sign for him. *State v. Carlisle*, 57 Mo. 102.

The signing should always be done in the presence of the notary taking the depositions, and where the examination is upon oral interrogatories, the parties or counsel, or such of them as may attend, have a right to be present.

Sec. 181.—The certificate.—

The notary or officer taking the deposition is required to append thereto his official certificate, showing how, when and where the deposition was taken.⁵⁵ The object of the certificate is to enable the judge before whom the case is being tried to determine whether or not the depositions were taken in conformity with the requirements of the statute. The general requirements are, that the witness should be duly sworn, before the questions are propounded to him, to tell the truth, the whole truth and nothing but the truth; that his testimony was written by the officer in his presence, that they were in his presence, read over to and subscribed by the witness, and in some instances the notary should state who, if any one, besides himself and the witness, was present during the taking of the deposition. The notary should be careful that the statutory requirements are strictly complied with and should then be careful to certify to all of such requirements.⁵⁶ While it is highly important that his certificate conform in every respect to the statutory requirements, the notary should never make his certificate conform to the statute when, in fact, he has not in taking the deposition, fully complied with the requirements of the statute. The certificate is more than a mere matter of form;

55. *Flournoy v. Jefferson Nat. Bank*, 79 Ga. 810, 2 S. E. 547; *Payne v. Briggs*, 8 Neb. 75.

56. A substantial compliance with the statute is sufficient, but the certificate must show a substantial compliance with all of the statutory requirements. *Stone v. Stillwell*, 23 Ark. 444; *Atchison, T. and S. F. R. Co. v. Pearson* Kan. App. 49 P. 681; *Thomas v. Wheeler*, 47 Mo. 363; *Kidder v. Blaisdell*, 45 Mo. 461; *Houston etc. Ry. Co. v. Larkin*, 64 Tex. 454; *Neill v. Codey*, 26 Tex. 290; *Ballard v. Perry*, 28 Tex. 362.

it purports to state the facts as they occurred in taking the deposition, and it should truthfully state all the facts and nothing more.

Sec. 182.—Certificate for several witnesses.—

When the depositions of several witnesses are taken under one notice, commission or agreement it is not necessary to annex a separate certificate to the deposition of each witness. One certificate at the close of the depositions is sufficient;⁵⁷ it should show that all the witnesses were duly sworn, and that each gave his deposition and that it was read over to him and signed by him in the presence of the notary.⁵⁸

Sec. 183.—Certificate—Statutory requirements.—

In ARKANSAS, "the certificate of the officer shall state the time and place of taking the deposition; that the witness

57. *Lord v. Siegel*, 5 Mo. App. 582; *Gulf City Ins. Co. v. Stephens*, 51 Ala. 121; *Pralus v. Pac. Gold Co.*, 35 Cal. 30; *How v. Pier-son*, 12 Gray (Mass.), 26.

58. Should name witnesses either in caption or certificate. *Amick v. Holeman*, 71 Mo. 445; *Shepherd v. Snodgrass*, 47 W. Va. 79, 34 S. E. 879

Should show that deposition was read over to witness, *People v. Mitchell*, 64 Cal. 85, 27 P. 862; *Ball v. Sykes*, 70 Iowa, 525, 30 N. W. 929; *Homberger v. Alexander*, 11 Utah, 363, 40 P. 260.

Should show that the deposition of each witness was signed by him. *Sibine etc. R. Co. v. Bousard*, 69 Tex. 617, 7 S. W. 374.

Should show that witnesses were duly sworn and that the oath was in the form prescribed by the statute. *Atchison T. and S. R. Co. v. Pearson*, 6 Kan. App. 825, 49 P. 681; *W. U. Tel. Co. v. Collins*, 45 Kan. 88, 25 P. 187, 10 L. R. A. 515; *Tranemel v. McDode*, 29 Tex. 360; *Missouri, etc., R. Co. v. Hennessy*, 49 S. W. (Tex. C. A.) 917.

A certificate showing that the witness was sworn "to testify the whole truth of their knowledge touching the matter in controversy," is insufficient. The witnesses should be sworn to tell the truth, the whole truth and nothing but the truth. *A. T. & S. F. R. Co. v. Pearson*, 6 Kan. App. 825, 49 P. 681.

The certificate should show who administered the oath to the witness. *Patton v. King*, 26 Tex. 685, 84 Am. Dec. 596.

was duly sworn before he gave his testimony, and that his testimony was written in the presence of the officer by the witness or the officer or by some one who was called on by the officer to write the same, read to and subscribed by him in the presence of the officer; and which of the parties, in person, or by agent or attorney, was present at the examination of witnesses." If the testimony is written in shorthand by a stenographer the certificate should show that the stenographer was duly sworn to correctly write and transcribe the same.⁵⁹

In KANSAS and OKLAHOMA "the officer taking the deposition shall annex thereto a certificate showing the following facts: That the witness was duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him; that the deposition was written and subscribed in the presence of the officer certifying thereto; that the deposition was taken at the time and place specified in the notice."⁶⁰

In MISSOURI, "to every deposition or examination taken . . . , shall be appended the certificate of the person or officer by or before whom the same shall be taken, showing that the deposition or examination was reduced to writing in his presence, and was subscribed and sworn to by the witness, and the place at which, and the days, within the hours when the same was taken."

"When the officer . . . shall, in his certificate, state the place of residence of the witness, such statement shall be *prima facie* evidence of the facts."⁶¹

In TEXAS, "the officer shall certify that the answers of the witness were signed and sworn to by the witness before him."⁶²

59. Kirby's Dig. Ark. sec. 3185; Castle's Supplement, sec. 3184—3185a.

60. G. S. Kan. sec. 5952; R. L. Okla. 5086.

61. R. S. Mo. secs. 6405, 6412.

62. R. S. Tex. art. 3660.

"In every case where depositions are taken under commission in criminal actions, the officer or officers taking the same should certify that the person deposing is the identical person named in the commission and is a credible person, or, if they can not certify to the identity of the witness, there shall be an affidavit of some person, attached to the deposition, proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them and is worthy of credit⁶³

Sec. 184.—Signature and seal.—

The officer should sign his certificate officially and impress his seal thereon; when he is appointed special commissioner he may sign as commissioner,⁶⁴ but, unless he is named in the commission his official signature and seal is necessary or essential to the admissibility of the deposition in evidence.⁶⁵

Sec. 185.—Certificate of official character.—

The impress of the notary's seal is sufficient proof of his official character unless other proof be required by statute,⁶⁶ but the statutes of some of the states require that when a justice of the peace or notary public outside of the state takes the deposition of any person, under a commission directed generally to any notary or other officer, he must have the judge or clerk of the county or district court of his

63. R. C. C. P. Tex. art. 826.

64. Dozier v. Joyce, 8 Port. (Ala.), 303; Morrison v. White, 16 La. Ann. 100; Davis v. Madden, 27 La. Ann. 632; Brown v. Ellis, 103 Fed. 834.

65. Ashcraft v. Chapman, 38 Conn. 230; Curtis v. Curtis, 131 Ind. 489, 30 N. E. 18; Pape v. Wright, 116 Ind. 502, 19 N. E. 459; Price v. Emmerson, 16 La. Ann., 95; Burham v. Porter, 24 N. H. 570; Shedd v. Leslie, 22 Vt. 498.

66. John v. Cocks, 12 Ark. 672; Greenwood v. Woodard, 18 Tex. 1; Barker v. Greer, 26 Tex. C. A. 89, 63 S. W. 934; Bullen v. Arnold, 31 Me. 583; Yarnell v. Hupp, 90 N. W. (Neb.) 645; Blakie v. Cooney, 8 Nev. 41.

county certify that he is a duly qualified and acting officer, at the time of the taking of deposition.⁶⁷ Such certificate is not required when the parties agree to take the deposition before a particular notary, or when the commission is addressed to the particular notary or justice acting nor is it necessary when the notary or person acting has been appointed, either by agreement of the parties or by order of the court, as a commissioner, to take such depositions. When taking depositions under a general commission it is generally the better practice to have the clerk of the county or district court to certify under the seal of the court that the notary was a duly qualified and acting notary at the time the deposition was taken.

Sec. 186.—Amendment of certificate.—

The court trying a cause in which depositions are to be used, may, in its discretion, order the deposition returned to the notary or officer before whom it was taken, and have the certificate amended so as to accord with the facts in regard to the taking of depositions⁶⁸. If in fact the statute was not followed in taking the deposition the certificate can not be amended so as to cure the defect, for, as before stated, the certificate must state truthfully what was actually done in taking the deposition.⁶⁹ After the deposition has been re-

67. *Jenkins v. Tobin*, 31 Ark. 306; *Thompson v. Stewart*, 3 Conn., 171, 8 Am. Dec. 168; *Scott v. Bassett*, 186 Ill. 98, 57 N. E. 835; *Barber v. Rickart*, 52 Ind. 594; *Morrison v. White*, 16 La. Ann. 100; *State v. Kimball*, 50 Me. 409; *Thompson v. Clay*, 60 Mich. 627, 27 S. W. 699; *State v. Valentine*, 29 N. C. 225; *Sargent v. Collins*, 3 Nev. 260; *Hayes v. Fry*, 54 Wis. 505.

68. *Conger v. Cotton*, 37 Ark. 286; *Borders v. Barber*, 81 Mo. 636; *Wallace v. Byers*, 14 Tex. C. A. 574, 38 S. W. 288; *Price v. Horton*, 4 Tex. C. A. 526, 23 S. W. 501; *Railway Co. v. Matula*, 79 Tex. 577, 15 S. W. 573; *Creager v. Douglas*, 77 Tex. 484, 14 S. W. 150; *Millican v. Smoot*, 71 Tex. 759, 12 S. W. 59; *Mullins v. Bullock*, 14 Ky. L. Rep. 40, 19 S. W. 8; *Gartside Coal Co. v. Maxwell*, 20 Fed. 187.

69. *Millican v. Smoot*, 71 Tex. 759, 12 S. W. 59.

turned and filed, the officer who took it can not withdraw it and amend his certificate without an order from the court.⁷⁰

Sec. 187.—Returning the deposition.—

When the deposition has been finished and properly certified, it should be securely sealed in an envelope on the back of which is indorsed the style and number of the suit, the name of the witness or witnesses and the amount of the official fee for taking the same.⁷¹ The officer should write his name and official character across the seal of the envelope.⁷² He may return the deposition in person, by mail or by pri-

70. *Creager v. Douglas*, 77 Tex. 484, 14 S. W. 150; *Wolf v. Underwood*, 97 Ala., 375, 12 So. 234.

71. *Babb v. Aldrich*, 45 Kan. 218, 25 P. 558. An envelope properly indorsed containing depositions may be enclosed in an envelope containing merely the direction. *Barber v. Greer*, (Tex. C. A.), 63 S. W. 1007; *Evans v. Reynolds*, 32 Ohio St., 163. When the return is in substantial compliance with the statute the deposition should be admitted. *Babb v. Aldrich*, 45 Kan. 218, 25 P. 558; *T. & P. Ry. Co. v. Felker*, (Tex. Civ. App.) 90 S. W. 530; *Knoxville Fire Ins. Co. v. Hurd*, 4 Tex. C. A. 82, 23 S. W. 393.

An envelope containing a deposition was indorsed with the names of the plaintiff and the defendant, the name of the officer before whom it was taken and was properly addressed to the clerk of the court in which the suit was pending; *held*, that the title and cause was sufficiently described by such indorsement. *Whettaker v. Voorhees*, 15 P. (Kan.) 874.

A deposition taken by two commissioners appointed by the court should be certified, and sealed by both of them, and the envelope should also be signed and sealed by both commissioners. *Waln v. Freedland*, 2 Miles (Penn.), 161. A commission issued in England to four commissioners jointly to take the deposition of a witness was returned by three of them; *held*, insufficient. *Guppy v. Brown*, 4 Dall. 410.

72. A substantial compliance will be sufficient. *Barber v. Greer*, 63 S. W. (Tex. C. A.) 934; *T. & P. Ry. Co. v. Felker*, 90 S. W. (Tex. C. A.), 530; *Smith v. Moody*, 94 Ga. 534, 21 S. E. 157; *Travers v. Jennings*, 39 S. C. 410, 17 S. E. 849; *Goodyer v. Vasberg*, 41 How. Pr. 421; *McClary v. Edwards*, 27 Barb. (N. Y.) 239; *Hall v. Barton*, 25 Barb. (N. Y.) 274.

vate messenger to the clerk of the court in which the suit is pending. If he returns it in person, he should have the clerk indorse thereon that he had received it from his hands.⁷³ If he send it by mail, he should address it plainly to the clerk of the court in which the suit is pending.⁷⁴ If sent by private messenger it may be sent by any person qualified to testify. When he delivers it to the clerk he should make affidavit that it was delivered to him by the officer taking it, that it has not been out of his possession and that it has not been altered or changed, which affidavit should be indorsed on the envelope.⁷⁵

Sec. 188.—Disqualification of officer.—

The statutes of Kansas and Oklahoma provide that the officer taking a deposition must not be a relative of an attorney for either party to the suit, and must not be in any way interested in the event or result of the suit.⁷⁶ The

73. The officer may return the deposition in person. *Andrews v. Parker*, 49 Tex. 84; *Hutson v. Hutson*, 9 Lea. (Tenn.), 354.

74. *Garner v. Cleveland*, 35 Tex. 74; *Crawford v. Laper*, 25 Barb. (N. Y.) 449; *Bulwinkle v. Cramer*, 30 S. C. 153, 8 S. E. 689.

The address on the envelope was "To the District Court" instead of "To the Clerk of the District Court;" *held*, immaterial error. *Eakin v. Morris*, 1 App. C. C. Tex., sec. 883. The requirement of the indorsement on the envelope is directory. *Knoxville Fire Ins. Co. v. Hurd*, 4 C. A. (Tex.) 82; 23 S. W. Rep. 393.

If the package reaches its destination intact, it is *prima facie* evidence that it was properly mailed by the officer. *Babcock v. Huntington*, 9 Ala. 869. The fact that the envelope is torn will not overcome this presumption. *Commercial National Bank v. Atkinson*, 64 P. (Kan.) 617.

75. Depositions may be returned by special messenger, and, when so returned, it is not incumbent upon the party introducing them to show that such messenger was not biased in the case. *Dill v. Camp*, 22 Ala. 249; but if the special messenger or person to whom the officer gives them fails to deliver them to the clerk, but hands them to another person to deliver to the clerk, it renders them inadmissible. *Sayer v. Sayer*, 14 N. J. L. 487.

76. G. S. Kan. sec. 5936; R. L. Okla. sec. 5870.

same rule is held and applied by the courts of other states⁷⁷ and is usually extended to agents of parties, and to clerks and employees of attorneys;⁷⁸ it has also been held that an illiterate officer is incompetent to take a deposition.⁷⁹

Sec. 189.—Depositions in criminal cases.—

IN ARKANSAS, MISSOURI, OKLAHOMA and TEXAS and some other states, the statutes provide that defendants in criminal cases may take the depositions of non-resident witnesses. The state can not under any circumstances take the depositions of a witness to be used in a criminal case. This can not be allowed because it would be in contravention of article VI of the amendments to the constitution of the United States, which provides that the defendant in a criminal case shall be confronted with the witnesses against him. But when the defendant applies for a commission to take the deposition of a witness, the attorney for the state

77. *Swink v. Anthony*, 96 Mo. App. 420, 70 S. W. 272; *Floyd v. Rice*, 28 Tex. 341; *Tillinghast v. Walton*, 5 Ga. 335; *Grove v. Grove*, 57 Miss. 658; *Bean v. Quimby*, 5 N. H. 94.

An attorney, in a distant city, employed to find witnesses to prove certain facts, is incompetent to take the depositions of such witnesses. *Testard v. Butler*, 20 Tex. C. A. 106, 48 S. W. 753.

An officer is not disqualified because he represents one of the parties in other cases, having no connection with the case in which the deposition is taken. *Burton v. Galveston, etc., R. Co.*, 61 Tex. 526. A deposition will not be suppressed, unless it is shown that the relationship of attorney and client existed at the time that the testimony was taken. *McGrew v. Wilson*, (Tex. C. A.) 57 S. W. 63.

78. *Tillinghast v. Walton*, 5 Ga., 355. A student, in the office of one of the attorneys in the case, held incompetent to take a deposition. *Glanton v. Griggs*, 5 G. A. 424; *Newton v. Foote*, 21 Eng. Reprint, 479; *Shaw v. Lindsey*, 33 Eng. Reprint, 798.

In KANSAS, it has been held that the book-keeper of one of the parties may take a deposition. *Palmer v. Hudson, etc., Hospital*, 10 Kan. App. 98, 61 P. 506.

79. Where one of the officers taking the deposition signs by mark the deposition was properly suppressed, the presumption being that such officer could neither read nor write. *Osten v. Carey*, 23 Ga. 4.

may in all cases file cross-interrogatories, and thus examine the witness in regard to any matter relevant to the issue.

It seems that in some of the states, in the absence of a statute depositions are admitted in criminal cases when taken by agreement between the defendant and the attorney representing the state.

In ARKANSAS, depositions of a resident witness may be taken in case there is reasonable ground to apprehend that, before the trial the witness will die, because mentally unsound or physically unable to attend court or become a non-resident of the state. In Missouri, if the witness is enfeebled, sick or infirm, bound on a voyage, about to leave the state or is confined in prison under sentence for felony his depositions may be taken. In Oklahoma when a witness is about to leave the state or is sick or infirm his depositions may be taken. In Texas a resident witness' deposition may be taken when he is aged or infirm.

Sec. 190.—Who may take depositions in criminal cases.—

The statute of Arkansas does not designate or name the officers who may take depositions in criminal cases. The presumption is that any officer who may take depositions in civil cases is authorized to take the same in criminal cases. The statute of Missouri provides that depositions in criminal cases shall be taken and read under the same rules and regulations as in civil cases. The statute of Oklahoma provides that the court ordering a deposition to be taken shall state or designate some magistrate to take such deposition and it must be taken before the magistrate so stated.

In TEXAS, depositions of witnesses within the state may be taken by a supreme or district judge, or by any two or more of the following officers; County judge, county or district clerk or notary public.

Depositions taken out of the state may be taken before a judge or chancellor of any supreme court, or before a com-

missioner of deeds and depositions for Texas, who resides in the state where the depositions are taken.⁸⁰

Sec. 191.—Execution of commission.—

In OKLAHOMA, a notary, unless otherwise specially instructed, should first administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. He should then reduce to writing, as nearly in the words of the witness as possible, his answers and read each answer to the witness changing it if necessary until he gets exactly what the witness declares to be the truth. If the witness declines to answer he should state that fact and the reason given by the witness for not answering. If there are any papers or documents testified about they, or copies of them, should be annexed to the deposition signed by the witness and certified by the notary. The notary should subscribe his name to each sheet of the answers, and close it under seal and address it as directed in the commission and must return it to the court as directed by the commission. In Texas, in every case where depositions are taken under a commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission and is a credible person; or if they can not certify to the identity of the witness, there shall be an affidavit of some person attached to such deposition proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them and is worthy of credit, and in cases where two officers shall act, the official seal and signature of each shall be attached to the certificate authenticating such deposition.⁸¹

80. R. L. Okla. secs. 6029, 6030; R. C. C. P. Tex. arts. 817-820.

81. R. L. Okla. sec. 6043; R. C. C. P. Tex. arts. 827-831.

THE REQUIREMENTS of the statute must be complied with, otherwise the deposition will not be admissible. *Kerry v. S.*, 17 Tex. App. 178; *Rider v. S.*, 26 Tex. App. 91; *Crook v. S.*, 27 Tex. App. 198.

CHAPTER X.

FORMS FOR TAKING DEPOSITIONS.

(For acknowledgments in various states, see Chapter V.)

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213.	Florida.	241.	South Dakota.
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218.	Iowa.	246.	Washington.
		247.	West Virginia.
		248.	Wisconsin.
		249.	Wyoming.

Sec. 192.—Caption and Certificate.—

The following are correct forms for caption, certificate and indorsements to be used in taking depositions. The

author would again call attention to the importance of, first, observing all the requirements of the law in taking the deposition; and, second, making out the caption, certificate and return in due form. The taking of the deposition in due form and certifying thereto has been held to be a ministerial act, and the notary and his sureties on his official bond are liable to any person damaged by his failure to duly observe the requirements of the statute, both as to the act of taking the deposition and the form of the caption, and certificate to the same.¹ The notary in making out his caption and certificate should carefully follow the form for the state from which the commission issued.

Sec. 193.—Forms for Arkansas.—

CAPTION.

A. B., Plaintiff, }
 No.— vs. } Suit pending in the circuit court of — county,
 C. D., Defendant. } Arkansas.

The depositions of —, taken the — day of —, A. D. —, at my — office, in the city or town of —, county of —, state of —, between the hours of — o'clock, A. M., and — o'clock, P. M., and to be read as evidence in behalf of plaintiff (defendant) on the trial of the above styled cause, pending in the — court of — county, Arkansas.

CERTIFICATE OF OFFICER.

County of —, } ss.

I, —, a — for said county, do hereby certify that the foregoing depositions of — and —, the witness before named, were taken before me, and were read to and subscribed by them in my presence at the time and place, mentioned in the caption, the said — and —, having been first sworn by me that the evidence they should give in the action should be the truth, the whole truth, and nothing but the truth, and their statements reduced to writing by me in their presence (*or by them in my presence*), the plaintiff alone being at the examination (*or the defendant, or both the plaintiff and defendant either in person or by attorney, or both*).

Given under my hand this — day of —, A. D. 19—.

(Official Signature.)

For forms for oath of witness and oath of stenographer see sec. 114.

1. *Cooper v. Bakeman*, 33 Me. 376.

Sec. 194.—Forms for Kansas.—**CAPTION.**

A. B., Plaintiff,	}	In the district court of — county, Kansas. Suit pending.
No. — vs.		
C. D., Defendant.		

Depositions of witnesses taken before me —, within and for the county of —, in the — of —, on the — day of —, A. D. 19—, between the hours of — A. M. and — P. M., at —, in said county, pursuant to annexed notice (or agreement, as the case may be) in an action pending in the — court, within and for the county of —, in the state of Kansas, wherein — is plaintiff and — is defendant. The said — in person, and by his attorney, —, appeared, and the said — (stating whether the adverse party appeared): thereupon the said — produced the following witnesses in the following order:

—, of lawful age, being by me first duly examined, cautioned and solemnly sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, deposes and says (here write the deposition, and proceed in the same manner with each witness).

CERTIFICATE OF OFFICER

STATE OF KANSAS,	}	ss.
County of —,		

I, (name and official character of officer), do hereby certify that (name of witness or witnesses) were by me first severally sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by me, (or if by some other person, state by — in my presence, who is not interested in the result of the suit above mentioned) in the presence of the witnesses respectively and were respectively subscribed by the witnesses in my presence, and were taken at the time and place mentioned in the annexed notice, (agreement or commission as the case may be) that I am not counsel, attorney or relative of either party, or otherwise interested in the result of this suit.

(SEAL.)

(Official Signature.)

If the taking of the deposition has been adjourned, state that the deposition was commenced at the time and place mentioned, etc. (if the adjournment was by agreement of the parties so state, if from sickness of witness, officer or some other unavoidable cause state fully the cause), and the taking of the deposition was therefore adjourned until the — day of —, A. D. 19—, when it was finished; or if the ad-

jourment was from day to day because it could not all be taken in one day, state, "and was adjourned from day to day until it was finished on the — day of —, A. D. 19—."

For forms for oaths of witness and stenographer see sec. 114.

Sec. 195.—Forms for Missouri.—

CAPTION.

A. B., Plaintiff,	}	Suit pending in the circuit court of — county, Missouri.
No.— vs.		
C. D., Defendant.		

Depositions of witnesses, produced, sworn and examined, on the — day of —, in the year of our Lord 19—, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at —, in the county of —, and state of —, before me (name of officer and style of office), in a certain cause now pending in the — court of the county of —, in the state of Missouri, between —, plaintiff, and —, defendant, on the part of the (state whether plaintiff or defendant), of lawful age, being produced, sworn and examined on the part of the —, deposeth and saith; (insert the statement of witness.)

CERTIFICATE OF OFFICER.

STATE OF MISSOURI, }
County of —. } ss.

I, A. B., notary public in and for said county, duly commissioned for a term expiring on the — day of —, A. D. 19—, do certify that in pursuance of the annexed commission and notices, I caused to appear before me at —, in said county and state, C. D. and E. F., who were by me first severally duly sworn (or affirmed) to testify the whole truth, and nothing but the truth, of their knowledge touching the mater aforesaid; that they were examined before me, and all the questions put to them, and their answers thereto were by me reduced to writing; * that their respective depositions were distinctly read over to said witnesses, and were by them respectively subscribed and sworn to before me; and that they were so taken, read over and subscribed and sworn to on the day, between the hours and at the place specified in the annexed notices.

*(If the depositions were not finished on the first day, insert at the point marked *, instead of "that their respective depositions," etc., the following clause: "That the taking of said depositions was begun on the day, between the hours and at the place specified in the annexed notices and was continued by adjournment from day to day at the same place and between the same hours as in said notices specified, and for the reasons above stated; that their depositions, having been reduced to*

writing as aforesaid, were distinctly read over to said C. D. and E. F., and were by them respectively subscribed and sworn to before me on the — day of —, and the — day of —, A. D. 19—.”

And said depositions are now herewith returned.

I further certify that said witnesses reside in the county of —, state of —.

And I further certify that the costs and expenses of taking said depositions as audited and allowed by me are as follows:

Commissioner's fee	\$.....
Constable's fee for serving two subpoenas.....	
Witness fee of C. D. for one day's attendance.....	
Witness fees for E. F. for two day's attendance.....	
Postage paid	

Total

All of which expenses have been paid by G. H.

Given at —, in the county of — and state of Missouri this— day.

(SEAL.)

A. B., Notary Public.

My commission will expire the — day of —, A. D. 19—.

For form for oaths of witness and stenographer see sec. 114.

Sec. 196.—Forms for Oklahoma.—

CAPTION.

A. B., Plaintiff,	}	In the district court of — county, Oklahoma. Suit pending.
No. —vs.		
C. D. Defendant.		

Depositions of — and —, taken before me —, a notary public in and for — county, state of —, at — on the — day of —, 19—, between the hours of — o'clock, A. M. and — o'clock, P. M., in accordance with the annexed notice (agreement or commission as the case may be), in the above styled cause, pending in the district court of — county, Oklahoma, each of said witnesses being by me fist duly sworn to tell the truth, the whole truth, and nothing but the truth, testified before me, separately, and—, being the first witness examined, testified and deposed as follows(here write testimony; if it be in answer to written interrogatories, number the answers as the interrogatories are numbered).

CERTIFICATE OF OFFICER.

STATE OF OKLAHOMA, }
County of —. } ss.

I,—, a notary public in and for the county of —, state of—, do hereby certify that — and —, the witnesses named in the an-

nexed notice (commission or agreement), appeared before me at the time and place mentioned in the above caption, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, gave the above testimony and deposition, subscribed by each of them respectively, that said depositions were reduced to writing by me (if written by some other person state who, and that he was not interested in the case), in the presence of the witnesses respectively and was respectively subscribed by said witnesses, each, in my presence, and that said depositions were taken at the time and place specified in said annexed notice (commission or agreement).

Given under my hand and seal of office, this — day of —, 19—.

Notary public, — county, —.

If the taking of the deposition has been adjourned, state that it was commenced at the time and place specified in the notice, and that it was adjourned on account of the sickness of the witness — (or if by agreement, or for other cause so state), until the — day of —, 19—, and state when it was finished. If the adjournment was from day to day, because it could not all be taken in one day, state "and was adjourned from day to day, until it was finished on the — day of —, 19—."

For form of oaths of witness and stenographer see sec. 114.
INSERT 10pt page 224

Sec. 197.—Forms for Texas.—

CAPTION.

A. B., Plaintiff,	}	Suit pending in the District court of —
No. — vs.		
C. D., Defendant.		
		county, Texas.

By authority of the commission directed to me and interrogatories accompanying the same, which are hereto attached, from the clerk of the district (or county, or from a justice of the peace) court of — county, Texas, in the case of — vs. —, now pending in said court, I caused to come before me at my office in the city and county of — aforesaid, the witness, — therein named, a resident of the county of —, aged — years, who being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories in the said case propounded to him, proceeded to answer the same as follows:

In answer to interrogatory first, the witness says:

CERTIFICATE OF OFFICER.

STATE OF TEXAS, }
 County of ——. } ss.

I, (name and style of officer), do hereby certify that the foregoing answers of the witness — were reduced to writing by me (or, by — in my presence) and that they were subscribed and sworn to before me by said witness at my office in the city of —, county of —, state of Texas, on the — day of —, A. D. 19—.

Witness my hand and seal of office, this — day of —, A. D. 19—.

(SEAL.)

(Official Signature.)

For form of oaths of witness and stenographer see sec. 114.

Sec. 198.—Exhibits.—

When letters, telegrams, contracts or other documents are attached as exhibits to answers, if the documents are small, it is better to attach each one to its proper answer; if they are large enough to be cumbersome when so attached, they may be referred to as "Exhibit A," "Exhibit B," etc., and attached to the back of the deposition.²

They should in each case be signed by the witness, and the officer should indorse thereon or on a piece of paper thereto attached, the following certificate:

STATE OF —, }
 County of —. } ss.

I hereby certify that the foregoing letter (or, other document) was shown to (or, produced by) the witness —, and was examined by him, and by him made a part of his answer No.—, and was at his request marked exhibit "A" and hereto attached.

(SEAL.)

(Official Signature.)

If clearly identified, they may be transmitted in a separate package. Bird v. Halsy, 87 Fed. 671.

Sec. 199.—When the original can not be attached.—

If from any cause the original instrument asked for can not be attached to the deposition, if the notary can get possession of it, he should make a copy for the witness to attach.

2. Crary v. Carradine, 4 Ark. 216; Atkins v. Guice, 21 Ark. 164; Renn v. Samos, 33 Tex. 760; Giles v. Paxon, 36 Fed. 882.

The witness should sign his name to such copy and the notary should indorse thereon as follows:

STATE OF —, }
County of —. } ss.

I do hereby certify that the foregoing exhibit is a true and correct copy of the original instrument inquired about in interrogatory No. —, that the original instrument could not be attached as requested (here give in full the reason why it could not be attached), that the said original instrument was produced before me, was identified by the witness —, and was copied by me, that said copy was examined by said witness and made a part of his answer No. —, and was at his request by me hereto attached and marked exhibit "A."

Witness my hand and seal, this — day of —, A. D. 19—.
(SEAL.) (Official Signature.)

Sec. 200.—Adjournment.—

When the taking of the deposition is adjourned for any cause the following indorsement should be written on the deposition:

On account of sickness of witness:

STATE OF —, }
County of —. } ss.

I, —, a notary public do hereby certify that the witness —, was taken suddenly ill, since the commencement of this deposition, that he is not able to continue with such deposition and that therefore the taking of his deposition has been adjourned until the — day of —, A. D. 19—, at — o'clock — M., and the parties to this cause have been notified of such adjournment (*or*, if the parties or their attorneys are present, state, and the parties (*or*, their attorney) have agreed to such adjournment).

Witness my hand this — day of —, A. D. 19—.
(SEAL.) (Official Signature.)

If the adjournment is for any other unavoidable cause state the cause in full.

When taking up the deposition again, indorse thereon:

Pursuant to the above adjournment at the time and place therein specified, the deposition of the witness —, was resumed (if the parties their attorneys or either of them are present, so state). The witness continued to answer as follows:

FOR WANT OF TIME TO COMPLETE DEPOSITION.

STATE OF —, }
County of —. } ss.

I, —, a notary public, before whom the deposition of —, is being taken do hereby certify that because such deposition can not be completed on this date, the taking of the same has, by consent of the parties (*or*, their attorneys), been adjourned until the — day of — A. D. 19—.

Witness my hand and seal of office this — day of —, A. D. 19—.

(SEAL.)

(Official Signature.)

When deposition is again taken up indorse as shown above.

Sec. 201.—Forms for envelopes.—

ARKANSAS

A. B., Plaintiff, No. — vs. C. D., Defendant	} Suit pending in the circuit court of county, Ark.	Deposition of —, a witness for Plaintiff.	Mr. —, Clerk of the Circuit Court. — County, —, Arkansas.
--	---	--	--

For reverse side see Texas envelope and note below.

KANSAS.

A. B., Plaintiff, vs. C. D., Defendant	In district court of _____ county, K a n. Suit pending.	Deposition of _____, taken on behalf of Plaintiff by _____, N. P.	To _____, Clerk of the District Court of _____ County, _____, Kansas.

For reverse side see Texas envelope and note below.

MISSOURI.

State of Missouri, County of _____	In the circuit court of _____ Mo. Suit pending.	A. B., Plaintiff, No. _____ vs. C. D., Defendant, Taken before _____, N. P.	Mr. _____, Clerk of the Circuit Court of _____ County, _____, Mo.

For reverse side see Texas envelope and note below.

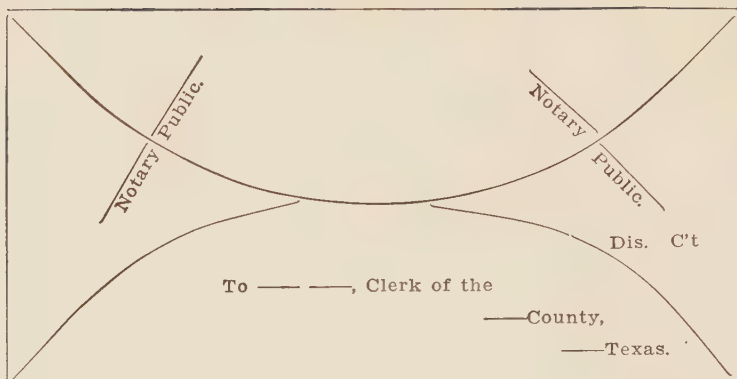
OKLAHOMA.

A. B. Plaintiff, } No. — vs. } C.D., Defendant, } Suit pending in of — district court of — county, Oklahoma.	Depositions of — and —, ta- ken on behalf of plaintiff, by —, notary public for county, state of —
To ———— , Clerk of the — Court of — County, ———— , Oklahoma.	

For reverse side see Texas envelope and note.

TEXAS.

A. B. Plaintiff, } vs. } C.D., Defendant, } Deposition of —, } In district court of — county. Suit pending.	State of —, } County of —, } ss. I hereby certify that on this — day of —, A. D. 19—, I, in person, deposit this package in the post office at —, for trans- mission to the clerk addressed on the opposite side hereof. Witness my hand and seal of office this — day of —, 19—, A. B., Notary Public.
Received this package from the postoffice at —, Clerk Dist. Court — Co.	



In all the states the notary should sign his name across the seal of the envelope as above indicated.

Sec. 202—Forms for subpoenas.—

The following form of subpoena may be used in KANSAS and MISSOURI:

FORMS FOR SUBPOENAS.

THE STATE OF ———, *To A. B., C. D., and E. A., Greeting:*

You are hereby commanded to be and appear before me, G. H., a notary public within and for the county of ———, in the state of ———, on the ——— day of ———, A. D. 19—, at the hour of ——— o'clock in the ——— noon of said day, at (here state where and in what town), in said county and state, then and there to testify and the truth to say, in a certain cause now pending in the (here state what court), county of ———, in the state of ———, wherein H. I. is plaintiff and J. K. is defedant on the part of the ———. Hereof fail not at your peril.

And the person or officer serving this writ is commanded to have the same before the said G. H., at the time and place aforesaid, certify in how he executed the same.

Witness, G. H., notary public within and for the county of ———, in the state of ———, with my official seal hereto affixed, at my office in said county, on this the ——— day of ———, A. D. 19—.

(SEAL.)

G. H., Notary Public.

My official term expires ———, 19—.

ARKANSAS AND TEXAS FORM.

THE STATE OF —, *To any constable of — county, Greeting.*

You are hereby commanded to summon A. B. and C. D. to be and appear before me, E. F., a notary public in and for the county of —, in the state of —, on the — day of —, A. D. —, at the hour of — o'clock in the — noon of said day, at (here state where) in said county and state, then and there to answer interrogatories and the truth to say, in a certain cause now pending in (here state what court) county of —, in the state of —, wherein G. H. is plaintiff and I. J. is defendant, on the part of the plaintiff (*or*, defendant).

And herein fail not but due return make of this writ before me at the time and place aforesaid, certifying how you have executed the same.

Witness my hand and seal of office on this — day of —, A. D. 19—.

G. H., Notary Public.

(SEAL.)

Sec. 203.—Fees.—

The notary should indorse on the commission, back of deposition or envelope an itemized statement of all fees and expenses of taking the deposition, and if the same have been paid, state by whom paid.

Sec. 204.—Taking depositions to be used in other states.—

It is not the object of this work to define and explain the duties of notaries public in any of the states other than the four for which this book is specially made, but as notaries in these four states will often be called upon to take depositions to be used in other states, this chapter will be devoted to forms and instructions in regard to the taking of depositions to be used in other states. In taking depositions to be used in other states the notary should bear in mind that the manner of procuring the attendance of the witness, and punishing him for his non-attendance, or refusal to testify after he has appeared, is governed by the laws of the state where the deposition is being taken.

That the manner and form of swearing the witness, writing down the testimony, writing the caption, certificate and returning to the proper officer the deposition, is gov-

erned by and must comply with the laws of the state where the deposition is to be used.

While the statutes of the different states will not be given in this chapter, forms, and special instructions, when necessary, will be given for each state, and if the notary will follow them carefully his work will be correctly done.

Sec. 205.—Alabama forms.—

CAPTION.

STATE OF ALABAMA,	}	A. B., Plaintiff,
		No. — vs.
County of —.		C. D. Defendant.

Answer and deposition of — the witness named in the accompanying commission, sworn and examined by me under and by virtue of said commission issued out of the — court of — county, Alabama, in the above styled cause, and the said — the witness named in said commission first being duly sworn, on the Holy Evangelists, to tell the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he answers, etc.

CERTIFICATE OF OFFICER.

I, (name and official character of officer), hereby certify that I caused to come before me, at, —, the witness, —; that he was duly sworn and examined, and that his evidence was taken down, as near as may be, in his own language; that it was read over to him and subscribed by him in my presence; that I have personal knowledge of the identity of said witness (or proof of his identity has been made), and that he is the person named in said interrogatories and commission annexed, and that I am not of counsel or kin to any of the parties to the cause, or in any manner interested in the result of the same. Witness my hand and seal, this — day of —, A. D. 19.—

(SEAL.)

(Official Signature.)

Envelope same as Texas, see sec. 201.

Sec. 206.—Alaska forms for deposition.—

CAPTION.

A. B.,	}	Suit pending in the — court for — district of Alaska.
vs.		
C. D.		

Deposition of — and — witnesses in behalf of plaintiff in the above entitled cause taken before me at my office in —, on the

— day of —, A. D. 19—, pursuant to the notice (*or* agreement) hereto attached, — appearing as attorney for plaintiff and — as attorney for defendant, (or no appearance), as the case may be.

—being first duly sworn testified as follows:

CERTIFICATE.

STATE OF —, }
County of —, } ss.

I, —, a notary public in and for the county of —, state of —, do hereby certify that on the — day of —, A. D. 19—, at my office in the city of —, in said county and state between the hours of — A. M. and — P. M. the foregoing deposition of — and — were taken before me pursuant to the notice (or agreement) hereto attached, appearances being made as stated in the caption. That such depositions were by me reduced to writing and after being completed each deposition was read to the witness making the same and was subscribed by him. That before the taking of such deposition each witness was sworn by me to tell the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in said suit.

Witness my hand and seal of office this — day of —, 19—.

My commission expires —, 19—.

(SEAL.)

(Official Signature.)

Sec. 207.—Arizona forms.—

CAPTION.

A. B. }
No.— vs. } In the district court of — county, state of
C. D. } Arizona, suit pending.

Answers and depositions of —, the witness named in the accompanying commission, who resides in — county —, to the direct and cross-interrogatories hereto attached, propounded to him in the above entitled cause, taken before me, (name and official character), in accordance with said commission.

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —, } ss.

I, (name and official character), do hereby certify that the foregoing answers of — the witness before named were made before me and were sworn to and subscribed before me by the said witness.

Given under my hand and seal of office, this — day of —, A.

D. —.

(SEAL.)

(Official Signature.)

The return of the deposition should be in the same form as that required in Texas, section 201.

Sec. 208.—California forms.—

CAPTION.

A. B. Plaintiff,	}	Suit pending in — court of — county, California.
vs.		
C. D., Defendant.		

Answers and depositions of —, a witness sworn and examined by me (name and official character), under and by virtue of a commission issued out of the above named court, in the above styled cause therein pending, and the said witness first being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

CERTIFICATE OF OFFICER.

STATE OF —,	}	ss.
County of —.		

I, [name and official character of officer], do hereby certify that —, the witness above named, appeared before me and after being duly sworn as above stated, his evidence was taken down and was thereafter read over and corrected by him, after which he subscribed the same in my presence on the — day of —, A. D. —, at my office in —, — County, state aforesaid; that I know said witness to be the same person named in said commission [if not personally acquainted state that he has been identified and proven to be, etc.]; and that plaintiff was present (if other persons, so state, or if no one but the witness and officer were present so state), while such deposition was being taken.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

[Official Signature.]

In returning the deposition the notary should endorse the style and number of the case on the envelope, address it to the clerk of the court from which the commission issued, seal up the envelope and write his name across the seal. See Forms for envelopes, section 201.

Sec. 209.—Colorado forms.—

CAPTION.

A. B.	}	In the district court of the — judicial district of Colorado within and for — county. Suit pending.
No. — vs.		
C. D.		

Answers and depositions of —, the witnesses named in the accompanying commission to the interrogatories hereto attached, taken by me, [name and official character], in accordance with said accompanying commission.

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —. } ss.

I, [name and official character of officer], do hereby certify that the above and foregoing deposition was taken before me and by me [or, by —, a disinterested person in my presence and under my direction], reduced to writing; that the said [—, witness], was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in suit now pending in the — court, in and for the county of —, in the state of —, wherein — is plaintiff, and —, is defendant, and that after said deposition had been all taken, it was carefully read over by me to said witness, and then by him subscribed as his deposition in my presence.

Witness my hand and official seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

If the notary is appointed by the commission as a special commissioner, and not as an officer, he should sign himself as commissioner and leave off his seal. Envelope same as Texas, see section 201.

Sec. 210.—Connecticut forms.—

CAPTION.

A. B. }
No. — vs. } Suit pending in the — court of — county,
C. D. } Connecticut.

—, the witness named in the accompanying commission being first duly cautioned and sworn, deposes and says:

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —. } ss.

Personally appeared before me the above named, —, signer of the foregoing deposition and made solemn oath to the truth of the same, which was taken at the request of [plaintiff or defendant] in accordance with the annexed commission, to be read as evidence on the trial of the above styled cause pending in the — court of — county, Connecticut. The adverse party was duly notified [or, waived notice] and was [or, was not], present when said deposition was taken. The reason for taking the deposition is that said witness lives outside of the state of Connecticut, and that said witness subscribed said deposition in my presence.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

The notary is required by the statute of Connecticut to caution the witness to speak the truth and the whole truth, and explain to him the penalty in case he should swear falsely.

Envelope same as Texas. See section 201.

Objections to testimony should be noted on the deposition, and every exhibit attached to the deposition should be signed by the witness.

Sec. 211.—Delaware forms.—

CAPTION.

A. B., Plaintiff, vs. No. — C. D., Defendant.	}	In the — court of — county, state of Delaware. Suit pending.
---	---	---

Answers and depositions of — and —, witnesses sworn and examined on the — day of — in the year of our Lord one thousand — and —, at —, in the county of — and state of —, by virtue of the annexed commission issued out of said court in the above styled and numbered cause, at the request and for the benefit of the plaintiff.

The first witness —, a resident of the county of —, state of —, aged — years, first being duly sworn [*or, affirmed*] and examined in behalf of the plaintiff, deposeth and saith as follows:

Note 1.—At the beginning of the testimony of each witness, when more than one is examined, the notary should place the heading as above indicated, as second witness, third witness, etc., giving the name, age and residence, etc., of each one.

EXHIBIT.

When exhibits are attached the notary should make the following indorsement and attach to the exhibit, attaching the exhibit under its proper answer, or referring to it by number or mark in the answer.

INDORSEMENT.

At the conclusion of question No. —, this paper writing was produced and shown to the witness —, and was examined by him and attached, marked exhibit A, and by him made a part of his answer to said question.

[SEAL.]

(Official Signature.)

CERTIFICATE OF OFFICERS.

I, [name and official character of officer], do hereby certify that in pursuance of the authority contained in the annexed commission, issued out of the — for — county, Delaware, I caused the several witnesses therein named to appear before me, and each, after being duly sworn to answer the questions propounded to him, and caused such answers to be reduced to writing as appears in the annexed schedule, and that said witnesses and each of them subscribed his answers in my presence.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

When taking depositions to be used in Delaware, the notary should indorse on the commission:

"This commission came to hand on the — day of —, A. D. —, and was duly executed by me on the — day of —, A. D. 19—, as shown by my certificate to the annexed depositions on pages — and — [giving the page number of the caption and certificate].

[SEAL.]

(Official Signature.)

The style and number of the cause and name of the court should be indorsed on the envelope and it should be addressed to the judge of the court from which the commission issued. See form for Missouri, section 201.

Sec. 212.—District of Columbia.—

CAPTION.

A. B., Plaintiff,	}	In the supreme court of the district of Columbia.
vs.		
C. D. Defendant		

Be it remembered, that an examination of witnesses begun and holden on the — day of —, A. D. 19—, when the depositions hereto attached were taken, I, —, an examiner and commissioner, appointed for that purpose by the above named court, did cause to personally appear before me, at my office in the city of —, at (here give street number or other description of place of office, if in a city), the following named witnesses, viz., —, —, to testify, on behalf of [plaintiff or defendant as the case may be], in the above styled and numbered cause now pending in the above named court, and, after swearing each of said witnesses to tell the truth the whole truth and nothing but the truth, took their answers and depositions to the attached interrogatories (*or*, to oral questions), which answers are as follows.

CERTIFICATE OF OFFICER.

I, [name and official character], hereby certify that on —, A. D. —, at —, personally appeared before me, pursuant to the notice hereto annexed, at — o'clock — M., —, the witness — named in said notice, and — appeared as counsel for the plaintiff—, and — as counsel for the defendant; and the said —, being by me first duly cautioned, and sworn to testify the whole truth; and being carefully examined, deposed and said, as appears by the deposition hereto annexed; and I further certify that the said deposition was then and there reduced to writing by me, [or, in witness' presence], and was, after it had been reduced to writing, subscribed by the witness —.

And I further certify that the reason why said deposition was taken was that the said witness —, reside at —, more than one hundred miles from Washington, D. C., the place where this cause is to be tried, [or, other reason, if any], and that I am not counsel or attorney for either party to the cause.

I further certify that the fee for taking the said deposition —, —, has been paid to me by —, and that the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal at —, in the county of — and state of —, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Envelope same as Kansas, see section 201.

Sec. 213.—Florida forms.—

OATH OF COMMISSIONER.

Under the statutes of Florida it is required that when depositions are taken out of the state, to be used in the state, the notary or person taking such deposition shall be sworn to perform their duty faithfully. The oath may be administered by any person authorized by the laws of the state, where the deposition is taken, to administer oaths; the following form is sufficient:

STATE OF —, }
County of —. } ss.

I [name and official character], duly appointed by the circuit court of the — judicial district of Florida, for the county of —, by virtue of the within commission to take the deposition of the witnesses therein

named, do solemnly swear that I will examine said witnesses concerning said matter in controversy well and truly according to the interrogatories attached to said commission.

(Signature of Commissioner.)

Subscribed and sworn to before me this — day of —, A. D. 19—.

[SEAL.]

(Signature of officer.)

CAPTION.

A. B. } In the circuit court of the — judicial circuit of Florida,
vs. } for — county. Suit pending.
C. D. }

By virtue of a commission issued out of the circuit court of the — judicial circuit of Florida for — county, to me directed [*or*, addressed to any notary of the state of —, and to me delivered] commanding me to take the depositions of — and — to be used as evidence in said cause, on behalf of [the plaintiff or the defendant, as case may be], I —, a notary public in and for the county of — and state of —, have caused said witnesses to appear before me and duly swore each of them true answers to make to the interrogatories and cross-interrogatories hereto attached. After being so sworn the witness — deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

Be it remembered, that on the — day of —, A. D. —, before me, —, a notary public, personally came and appeared — and —, the witnesses mentioned in the annexed commission, who being by me first duly sworn, did answer all and singular the interrogatories to said commission attached, as above written and set forth; that said answers were by me correctly written and were read over to said witnesses, and each of said witnesses then subscribed his answers.

Given under my hand and seal of office, this — day of —, A. D. —.

[SEAL.]

(Official Signature.)

Indorsement on envelope same as Texas. See Envelopes, Texas, section 201.

Sec. 214.—Georgia forms.—

The commission is usually issued to two persons, one named by the plaintiff and one named by the defendant,

and addressed to them personally. The persons acting should in all cases sign themselves as commissioners and not in their ordinary official capacity.

CAPTION.

A. B. }
No. — vs. } Suit pending in the — court for the county of —,
C. D. } state of Georgia.

Be it remembered, that on this — day of —, A. D. —, by virtue of a commission issued out of the honorable — court for — county, Georgia, we have caused — and —, witnesses named in said commission to appear before us, who being duly sworn true answers to make to the annexed interrogatories, depose and say:

—, first witness, answers:

CERTIFICATE.

At the end of each witness' answers the commissioners should write:

"Answered, subscribed and sworn to before us, this — day of —, A. D. —.

Commissioners."

Indorsement on envelopes same as Texas. See Envelopes; Texas, section 201.

Sec. 215.—Idaho forms.—

A. B., Plaintiff, }
No. —, vs. } Suit pending in the — court of — county,
C. D., Defendant. } Idaho.

Answers and depositions of —, taken before me [name and official character], by virtue of a commission issued out of the — court of — county, Idaho, which is hereto annexed, commanding me to take the deposition of said witness.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that the foregoing answers and deposition of —, the witness named in the annexed commission, were made before me, were written down by me [or, by —, a disinterested person in my presence], and were sworn to and

subscribed before me by said witness on this — day of —, A. D. 19—.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Envelope same as Missouri. See section 201.

Sec. 216.—Illinois forms.—

A. B.	}	Suit pending in the — court of — county, Illinois.
No. —, vs.		
C. D.		

The deposition of —, of the county of —, state of —, a witness of lawful age produced, sworn and examined on his oath [*or, affirmation*], on the — day of —, A. D. 19—, at the [*office or house*] of —, in the [*town or city*] of —, in the county of — and state of —, by me, —, a commissioner duly appointed by a commission issued out of the clerk's office of the — court of — county, in the state of Illinois, bearing test in the name of —, clerk of said court, with the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said —, a witness in a certain suit and matter in controversy now pending and undetermined in the said — court of — county, wherein — is plaintiff and — is defendant, in behalf of the said —, as well as upon the cross-interrogatories of the said —, as on the interrogatories of the said —, which were attached to or inclosed in the said commission, and upon none others.

The said — being by me first duly sworn [*or, affirmed*] as a witness in the said cause previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant. In relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first [here insert first interrogatory].

Answer to the first interrogatory [here insert answer].

And so on, inserting interrogatories and answers in their order. Then follow "cross-interrogatories" on the part of the defendant or plaintiff, as the case may be, and answers thereto by the witness.

The interrogatories, as well as the answers, should be reduced to writing by the officer. The witness should be sworn before he answers as shown in caption, and after the answers are taken down and read over to him, he should again be sworn as to the truth and correctness of such answers.

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —. } ss.

I, —, of the county of — and state of —, a commissioner duly appointed to take the deposition of the said —, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said —, as a witness in the suit between the said —, plaintiff, and the said —, defendant, he was duly sworn by me, as such commissioner, to testify the truth in relation to the matters in controversy between the said —, plaintiff, and —, defendant, so far as he should be interrogated concerning the same; that the deposition was taken at my office, in the city of —, in the county of —, and state of —, on the — day of —, A. D. 19—, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down, were read over to said witness, and that thereupon the same was signed and sworn to by the said witness, —, the oath being administered by me as such commissioner, at the place and on the day and year last aforesaid.

(—, Commissioner.)

Return same as Missouri. See "Envelope;" Missouri," sec. 201.

Sec. 217.—Indiana forms.—

CAPTION.

A. B. }
No. —, vs. } Suit pending in the — court of the — county,
C. D. } Indiana.

Depositions of —, a witness in the above styled cause now pending in the above named court of — county, Indiana, taken before me pursuant to the annexed notice and commission, at the time and place in my certificate hereinafter named, to be used as evidence in said cause, the said — of lawful age, being first duly sworn, deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], within and for said county, hereby certify that the above [here set out the names of the witness or witnesses] [was or were] by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, relating to said cause, that [his or their] deposition was reduced to writing by me [by said deponent, or by A. B., a disinterested person, in my presence and

under my directions, as the case may be], that the said — [adverse party] attended in person [or by C. D., his or their attorney, or was not present, as the case may be], and said deposition — taken at — in — county of —, state of —, on the — day of —, A. D. 19—, between the hours of — A. M. and — P. M. of said day.

In testimony whereof I have hereunto set my hand and — seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See "Envelope;" "Missouri," sec. 201.

Sec. 218.—Iowa forms.—

CAPTION.

A. B., Plaintiff, No. —, vs. C. D., Defendant.	}	In the — court for — county, Iowa. Suit pending.
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Depositions of witnesses produced, sworn and examined —, in the county of — and state of —, before me, — [name and title of officer], at my office in the town of —, in pursuance of the annexed commission to me directed in an action now pending in the — court of the state of Iowa, in and for — county, wherein — is plaintiff, and — defendant, on behalf of the [plaintiff or defendant].

A. B., of lawful age, being produced, sworn and examined on behalf of [plaintiff or defendant] deposed as follows:

CERTIFICATE.

STATE OF —, County of —.	}	ss.
-----------------------------	---	-----

I, — [giving name of officer and style of office], within and for — county, state of —, do hereby certify that in pursuance of the annexed commission I caused to come before me at my office in —, in said county and state, A. B., C. D., etc., etc. [names of all the witnesses], on the — day of —, A. D. 19—, who were then and there by me sworn and examined on the interrogatories and cross-interrogatories to said commission annexed, and such examination reduced to writing by me or by [some other person, naming him, not interested in this suit], and after being read over to said witnesses the same were subscribed and sworn to by them respectively in my presence, and their depositions are now herewith returned; and I further certify that each of said witnesses reside in — county, state of —, and that neither of the parties, nor the agent or attorney of either, was

present during said examination [or, if they were present, state the facts].

Witness my hand and official seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as for Missouri. See "Envelope;" "Missouri," sec. 201.

Sec. 219.—Kentucky forms.—

A. B.,
No. —, vs. } In the circuit court of the — judicial circuit of
C. D., } Kentucky, for — county.

Answers and depositions of — and —, the witnesses named in the annexed commission, taken before me at my office in —, in the county of —, state of —, on this — day of —, A. D. 19—, in accordance with said commission.

The witness — first being duly sworn, says:

CERTIFICATE.

STATE OF —, }
County of —, } ss.

I, [a notary public duly commissioned, qualified and acting in and for — county —], do hereby certify that the foregoing depositions of A. B., C. D., and E. F. were taken before me at the time and place stated in the caption [and adjournments as hereinbefore noted], that said witnesses were severally duly sworn by me that the evidence they should give in their depositions should be the truth, the whole truth, and nothing but the truth, before giving their said respective depositions, and that the said depositions of the said witnesses were [severally written and subscribed by said witnesses respectively in my presence, or] written by me in the presence of said witnesses respectively, and read to and severally subscribed by the witnesses in my presence.

Witness my hand and seal of office this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Arkansas. See "Envelope;" "Arkansas," sec. 201.

Sec. 220.—Louisiana forms.—

A. B.,
No. —, vs. } Suit pending in the — court for the parish of —,
C. D. } Louisiana.

Depositions of witnesses, produced, sworn and examined on the days hereinafter mentioned, before me [name and official character]

in my office at —, in — parish, state of —, under and by virtue of the annexed commission, issued out of the honorable, the — court, in and for —, to take depositions in a certain cause pending and at issue in said court, between —, planitiff, and —, defendant, and numbered — on the docket of said honorable court.

STATE OF —, }
County of —. } ss.

I, — [name and official character], do hereby certify that I caused [names of all the witnesses], witnesses hereinbefore named and examined, to appear before me at the times and places above designated, and after publicly and solemnly swearing [or affirming] each, separately, to tell the truth, the whole truth, and nothing but the truth, in answer to the annexed direct and corss-interrogatories, I then and there proceeded to examine each witness separately, by propounding to him the said direct and cross-interrogatories, and reducing in my presence and in presence of the witness his answers thereto in writing, with my own hand [if such is the case; if not, state facts fully], and then caused each witness to sign his deposition in my presence, as already stated.

In testimony whereof I have hereunto set my hand and seal, [if he has one], on this, the — day of —, A. D. 19—.

[SEAL.]

(Signature of officer, with quality.)

Return same as Missouri. See sec. 201.

Sec. 221.—Maine forms.—

A. B., }
No. —, vs. } In the — court for — county, Maine. Suit pending.
C. D. }

The deposition of —, to be used in evidence in a certain cause now pending in the — court of the state of Maine, within and for the county of —, in the state of Maine, wherein — is plaintiff, and — defendant. —, of the —, being first duly sworn [or affirmed], deposes and says as follows:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

On this — day of —, A. D. 19—, the within named deponent personally appeared before me at my office in the town of —, in said county, and being first sworn by me, according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which his within deposition was to be taken; and then

being examined on interrogatories, according to law, gave on oath the within deposition, which was written by me [or by —, a disinterested person, in my presence and under my direction], and after the said deposition had been carefully read by me to said deponent it was then subscribed by him in my presence.

Said deposition was taken at the request of the plaintiff; the adverse party was notified to attend and did [or did not] attend its taking. The cause in which it is to be used is an action of —, in which — is plaintiff, and — defendant, which is now pending in the — court, within and for the county of —, in said state, and is to be tried in said court at its term to be holden at —, within and for said county of —, on the — day of —, A. D. 19—.

The cause of taking said deposition is that the deponent does not reside in the state of Maine, but is a resident of the —.

Witness my hand and seal at said —, the day and year first named.

[SEAL.]

(Official Signature.)

Envelope same as Missouri. See section 201.

Sec. 222.—Maryland forms.—

The statute of Maryland requires that the officer or officers who act under the commission shall be sworn.

The oath should be reduced to writing and signed by the commissioners. It may either be indorsed upon the commission, or written upon a separate piece of paper, and may be in form as follows:

STATE OF —, }
County of —. } No.

Be it remembered, that on this — day of —, A. D. 19—, before me, A. B. [style or office], lawfully authorized to administer oaths and affirmations in said county [or, A. B., one of the commissioners named in the within (or annexed) commission (S. C.)], appeared C. D., a notary public in and for said county, who, being by me first duly sworn, on his oath saith that he will truly, faithfully and impartially take the examination of all and every witness and witnesses produced and examined by virtue of the within [or, annexed] commission, upon the interrogatories and cross-interrogatories thereto annexed, in the case now pending in the — court of — county, in the state of —, wherein — is plaintiff and — is defendant. C. D.

Subscribed and sworn to before me on the day and year first aforesaid.

A. B. [official title].

CAPTION.

A. B., Plaintiff, No. —, vs. C. D., Defendant.	}	Suit pending in the — court for — county, Maryland.
--	---	--

By virtue of the annexed commission, issued out of the circuit court of — county, Maryland, directed to me and empowering me to examine witnesses in the above styled and numbered cause pending in said court, I, —, the officer [or commissioner] therein named, first having taken and subscribed the oath prescribed by law before [name and official title of officer before whom oath was taken] duly commissioned, and which oath is attached to said commission, did proceed to take the depositions of the following, witnesses in the presence of the attorneys for the respective parties [or no one being present but myself and said witness; state as the case may be], to wit:

1st. —, a witness of lawful age, produced on the part of plaintiff, being by me first duly sworn and examined on the interrogatories herewith returned, deposes and says:

CERTIFICATE.

When done examining all the witnesses the following certificate should be appended:

STATE OF —, County of —.	}	ss.
-----------------------------	---	-----

There being no other witnesses to examine, I [name and title of officer], first having each witness to subscribe his answers in my presence, closed said commission and herewith return the same under my hand and seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 223.—Massachusetts forms.—

C. D. No. —, vs. A. B.	}	Suit pending in — court of — county, Massa- chusetts.
------------------------------	---	--

Answers and depositions of — and —, the witnesses named in the commission hereto annexed, issued out of the — court for — county, Massachusetts, and delivered to me, by virtue of which I caused said witnesses to appear before me at my office in —, and the said — being by me first duly sworn deposes and says:

CERTIFICATE OF OFFICER.

STATE OF —, County of —.	}	ss.
-----------------------------	---	-----

Pursuant to the foregoing commission I caused the said — to come before me, on the — day of —, A. D. 19—, and having sworn

in a city, describe its location by street and number or name of building], in the county of —, state of —, that the taking of said deposition was begun on said date at — o'clock, A. M., and then and there appeared —, attorney for the plaintiff and —, attorney for the defendant, and said deposition was continued and completed on said date at — o'clock, P. M.

3d. That the said witness was first sworn by me to speak the truth, the whole truth, and nothing but the truth, concerning the matter in issue in the above entitled cause and was then examined by me on the direct and cross-interrogatories hereto attached, [if on oral questions, state, on oral questions propounded by —, attorney for the plaintiff, and by —, attorney for the defendant.]

4th. That the answers of said witness [if questions are oral, state interrogatories and answers] were written down by me [if taken in shorthand and transcribed, so state], and were correctly read over to said witness by me, and were signed by said witness in my presence and are hereto attached and constitute this deposition; and I certify that the same is correct and that it contains, truly and fully, the answers of the witness (if questions are oral, state interrogatories and answers) and nothing more nor less.

5th. That I am not of counsel nor attorney for either of the parties to this suit, nor am I interested in the event of this suit, that I am a notary public in and for the county of —, state of —, and as such am authorized under the laws of said state to administer oaths.

Witness my hand and seal of office at my office in —, in the county of —, state of —, this — day of —, 19—.

A. B., Notary Public.

Sec. 225.—Minnesota forms.—

CAPTION.

A. B.,	}	Suit pending in the — court of — county, Minnesota.
No. — vs.		
C. D.		

Answers and depositions of —, who resides in — county, state of —, taken before me by virtue of a notice [or order] hereto attached.

CERTIFICATE OF OFFICER.

STATE OF —,	}	ss.
County of —.		

Be it known that I took the annexed depositions pursuant to the annexed notice [or order or commission]; that I was then and there a —; that I exercised the power of that office in taking such depositions; that by virtue thereof I was then and there authorized to administer

an oath; that each witness before testifying was duly sworn to testify the whole truth, and nothing but the truth, relative to the cause specified in the annexed notice [or order or commission]; that the testimony of each witness was *correctly* read over to him by me before he signed the same [if the examination was oral]; that the examination was conducted on behalf of the plaintiff by —, and on behalf of the defendant by —.

Witness my hand and seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Envelope same as Missouri. See sec. 201.

Sec. 226.—Mississippi forms.—

A. B.,
No. — vs. } Suit pending in the — court of — county, Mississippi.
C. D.

Be it remembered that on this — day of —, A. D. 19—, by virtue and in pursuance of a commission to me directed from the — court for the — district of the state of Mississippi, to take the deposition of —, of the county of —, state of —, aforesaid, a witness for the complainant, in a certain case therein pending, wherein — is complainant and — is defendant, on the interrogatories and cross-interrogatories annexed and accompanying the said commission, I, —, caused the said —, a person of sound mind and upwards of twenty-one years of age, to come before me at my office in —, state of —, and said — being by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did depose and say:

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —. } ss.

I, —, specially appointed a commissioner in the cause styled in the caption of the foregoing deposition, to take the testimony of —, a witness for the complainant in said cause, do hereby certify that I caused to come before me the said —, at —, in the state aforesaid, and he being by me first duly cautioned, sworn and examined, to speak the truth, the whole truth and nothing but the truth, I did carefully and impartially examine said witness on said interrogatories and cross-interrogatories, when he did depose and testify as above shown; that the answers of the said — were by me reduced to writing in the presence of said witness, and by me carefully read to and thoroughly understood by said witness as his deposition in said cause;

that he signed the same as his deposition in my presence; that the questions propounded to said witness, and to which he has answered, are the direct and cross-interrogatories accompanying said commission; that said deposition has in no manner been changed or altered since the same was subscribed by said witness, but that the same with the exhibits thereto which are herewith returned has remained in my possession up to the time of sealing and delivering the same to the post-office [or party, as the case may be] directed to the clerk of the said court.

I do further certify that I am a notary public in and for the county of —, state of —, and that as such officer I am authorized, under the laws of said state, to administer oaths.

In witness whereof I have hereunto set my hand and affixed my seal, — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Envelope same as Missouri. See sec. 201.

Sec. 227.—Montana forms.—

CAPTION.

A. B., Plaintiff,	}	Suit pending in the — court for — county, State of Montana.
vs.		
C. D., Defendant,		

Be it remembered, that pursuant to the commission and notice [or stipulation] hereto attached, on the — day of —, 19—, at my office in the town of —, county of —, and state of —, before me, —, a notary public in and for said county and state, duly commissioned and acting personally appeared —, a witness for the plaintiff [or defendant] in the above entitled cause, who, being by me first duly sworn, deposed and testified as follows.

CERTIFICATE.

STATE OF —,	}	ss.
County of —.		

I, —, a notary public, in and for the county of —, state of —, do hereby certify that the witness —, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in said cause; that said deposition was taken at the time and place mentioned in the annexed commission and notice [or stipulation], to wit, at my office in the town of —, county of —, state of —, on the — day of —, 19—, between the hours of — and —, on said day; that said deposition was reduced to writing by me and when completed was carefully read over by me to said witness;

and, after being in all things corrected as suggested by said witness, was by him subscribed in my presence.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office this — day of —, 19—.

—, Notary Public.

Sec. 228.—Nebraska forms.—

CAPTION.

A. B.,
No. — vs. } Suit pending in the — court for — county, Nebraska.
C. D. }

Answers and depositions of — and —, witnesses named in the annexed commission [notice or agreement] taken before me [name and official character] at my office in —, — county, state of —, on the — day of —, A. D. 19—, between the hours of — A. M. and — P. M., in accordance with said commission [notice or agreement] to be read in evidence in behalf of the plaintiff on the trial of the above styled cause pending in the court above named.

The witness — being of lawful age and being by me first cautioned and by me solemnly sworn, deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, A. B. [naming the official character of the magistrate according to the fact] do hereby certify that [naming all the witnesses who have testified] were by me first severally sworn [*or*, affirmed] to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by myself [*or*, if by any other person, name him and say, by —, who is not interested in the suit, in my presence, and] in the presence of the witnesses respectively, and were respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice [*or*, agreement] specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event in this suit; [if there be adjournments, add] and said depositions were commenced at the time in said notice specified, and continued by adjournments from day to day as above stated.

Witness my hand and seal of office, on this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Envelopes same as Kansas. See "Kansas;" "Envelope," sec. 201.

Sec. 229.—Nevada forms.—

The commissions issued by the courts of Nevada are always addressed to individual persons, some of whom must act in taking the depositions. The commissioner should swear all the witnesses publicly and then examine each one separately.

CAPTION.

A. B.,
No. — vs. } Suit pending in the — court of — county, Nevada.
C. D. }

Answers and depositions of — and —, the witnesses named in the annexed commission, issued out of the above named court in the above styled and numbered cause, by virtue of which I caused said witnesses to appear before me at my office in the town of —, county of —, state of —, on the — day of —, A. D. 19—.

The witness —, being first duly and publicly sworn, in accordance with the directions in said commission, deposes and says:

CERTIFICATE OF OFFICER.

STATE OF —, }
County of —. } ss.

I, —, one of the commissioners appointed in the annexed commission to take the depositions of the witnesses therein named, in the above styled cause, do hereby certify that — and —, the said witnesses, appeared before me at my office in —, — county, state of —, and being by me first duly and publicly sworn to tell the truth, the whole truth, and nothing but the truth, were separately examined and the testimony of each was by me reduced to writing, and after being by me read over to them, each subscribed his deposition in my presence.

Witness my hand and seal of office, this — day of —, A. D. 19—.

The commissioner should endorse on the commission.

"This commission was executed by me as shown by my certificate on page — of the accompanying depositions.

"—, Commissioner."

The commission, interrogatories and answers should then be fastened together with tape and the knot sealed either with wax or wafer seals.

Return same as Missouri. See "Envelope;" "Missouri," sec. 201.

Sec. 230.—New Hampshire forms.—**CAPTION.**

A. B., Plaintiff, }
 No. —, vs. } Suit pending in the — court for — county,
 C. D., Defendant. } New Hampshire.

Answers and depositions of —, a witness in the above styled cause, taken before me at my office in — — county, state of —, in accordance with the commission [or notice] hereto annexed. Said witness being sworn deposes and says.

CERTIFICATE OF OFFICER.

STATE OF —, }
 County of —. } ss.

I, [name and character of officer], do hereby certify that —, the witness above named, personally appeared before me at my office in — — county, state of —, on the day of —, A. D. 19—, and after subscribing the foregoing deposition in my presence, made solemn oath that the same contains the truth, the whole truth, and nothing but the truth, so far as his knowledge goes relative to the cause in which it was taken. The said deposition is taken at the request of [plaintiff or defendant as the case may be] in the above styled cause to be used in the above named court on the trial thereof. The taking of said deposition was begun at — o'clock, — on said date and was continued [if more than one day state, from day to day] until the whole was completed. The [adverse party, naming him] being duly notified was [or was not] present. The reason for taking said deposition was that the witness lives out of the state.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

FEES FOR TAKING DEPOSITIONS.

Notary's fees.....\$....

Witness fees.....\$....

Sheriff's fees.....\$....

Total.....\$....

Envelope same as Texas. See sec. 201.

Sec. 231.—New Jersey forms.—**OATH OF COMMISSIONER.**

STATE OF —, }
 County of —. } ss.

Be it remembered that on this — day of —, A. D. 19—, at —, in the county of —, and state of —, before me, —, a notary

public, lawfully authorized to administer oaths, and affirmations in the state and county aforesaid, personally appeared —, residing in —, the commissioner in the within commission named, who being by me duly sworn, on his oath doth say that he will faithfully, fairly and impartially execute the said commission.

(Commissioner's Signature).

Sworn and subscribed before me, the day and year above written.

CAPTION.

A. B.,
No. —, vs. } Suit pending in the — court of — county, New Jersey
C. D. }

Be it remembered that on this — day of —, A. D. 19—, at —, in the — of —, in the county of —, and state of —, being the time and place appointed by us for taking the examination of the witnesses named in the commission to which this schedule is annexed, we, — and —, the commissioners therein named, having first taken the oath required of us in this behalf, faithfully, fairly and impartially to execute the said commission before —, who is a —, lawfully authorized to administer oaths and affirmations in said county and state, proceeded to examine such of the witnesses aforesaid as could be met with, upon the interrogatories annexed to the said commission as therein directed, and caused such examination to be taken down in writing, and signed by the witnesses respectively, and signed the same ourselves, as hereinafter follows:

—, one of the witnesses named in said commission, being first duly sworn true answers to make to the direct and cross-interrogatories to him propounded, deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

—, the commissioner within named, doth hereby certify and return to the — court of — that he has duly executed the within commission in manner and form as is therein and thereby commanded; and that the execution thereof will fully appear by the schedule to the said commissioner and the accompanying interrogatories annexed.

Given under my hand and seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See "Envelope;" "Missouri," sec. 201.

Sec. 232.—New Mexico forms.—

CAPTION.

C. D. }
 No. —, vs. } Suit pending in the — court of — county, New Mex-
 A. B. } ico.

Deposition of —, witness, taken before me, —, a notary public in and for — county, and —, by virtue of a commission issued out of the above named court in the above entitled and numbered cause. The said witness being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

CERTIFICATE.

STATE OF —, }
 County of —. } ss.

I, [name and official character], do hereby certify that —, the witness above named, personally appeared before me on the — day of —, A. D. 19—, and, after being by me duly sworn, answered the interrogatories hereto attached, and his answers were by me taken down in writing and were read over and corrected by him, and were then subscribed by him in my presence, and were sworn to by him before me, and I personally know [or, if not known, state that he has been proven to me by two credible witnesses who are known to me] to be the same person named in said commission.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 233.—New York forms.—

The notary should publicly swear the witnesses to testify the truth, the whole truth, and nothing but the truth, in regard to matters about which he may be interrogated, and should then examine each witness separately and apart from the others.

CAPTION.

A. B., Plaintiff, }
 No. —, vs. } Suit pending in the — court for — county,
 C. D., Defendant. } New York.

Depositions of — and —, the witnesses named in the annexed commission taken before me [name and official character] on the — day of —, A. D. 19—, by virtue of said commission issued out of the

— court of — county, New York, in the above entitled and numbered cause.

—, the first witness, aged — years and a resident of — county —, first being publicly sworn to testify to the truth, the whole truth and nothing but the truth, examined on the part of the [plaintiff or defendant, as the case may be] deposes and says as follows:

The notary should sign his name officially to every half sheet of the deposition.

CERTIFICATE..

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that — and —, the witnesses before named, personally appeared before me at my office in —, — county, — on the — day of —, A. D. 19—, at — o'clock — M., and after being sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matters contained in the foregoing deposition, and did in my presence subscribe the same and indorse the exhibits annexed thereto; and I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

Witness my hand and seal of office, this — day of — A. D. 19—.

[SEAL.]

(Official Signature.)

If counsel for either side appears, the certificate should show that fact, stating name of each attorney.

Return same as Missouri. Sec. 201.

Sec. 234.—North Carolina forms.—

CAPTION.

A. B., Plaintiff, }
vs. } Suit pending in the superior court of —
C. D., Defendant. } county, North Carolina.

Pursuant to the annexed commission delivered to me [name and official character], authorizing me to take the depositions of —, a witness for plaintiff, to be read in evidence in the above styled and numbered cause, now pending in the superior court of — county, North Carolina, I caused said witness to appear before me at my office in —, — county, —, at 9 o'clock A. M., on the — day of —, A. D. 19—, and said parties both being present [or if not present so state, or if one party or his attorney should appear and the other not, state which one], I proceeded to examine said witness who being by me first duly sworn, deposes and says as follows:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that the evidence of the witness —, was taken down under oath and was read over to and subscribed by him in my presence on the — day of —, A. D. 19—, at my office in —, — county, —.

I further certify that I know said witness [or that said witness has been proven to me] to be the same person whose name appears in the annexed commission, and that both parties [or neither, or plaintiff or defendant, as the case may be] [or that — attorney for plaintiff or defendant, according to the facts] were present during the examination of said witness.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

RETURN.

The envelope should bear the following indorsement:

C. D. }
No. —, vs. } Superior court of — county, North Carolina.
A. B. }
Depositions of —

Taken by order of the court in the above entitled cause by me.
(Official Signature.)

The envelope should be signed across seal and addressed to the clerk as in other cases.

Sec. 235—North Dakota forms.—

CAPTION.

C. D. }
No. — vs. } Suit pending in the — court of — county, North
A. B. } Dakota.

Answers and depositions of — and —, taken before me [name and official character] within and for the county of —, state of —, on the — day of —, A. D. 19—, pursuant to the annexed notice [commission or stipulation], in the above styled cause pending in the — court of — county, North Dakota, and for said plaintiff [or defendant, as the case may be]. Plaintiff and defendant both being represented by counsel during the examination of said witnesses.

The witness —, being first duly sworn as hereinafter certified, testified as follows.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, —, [name and title of officer], do hereby certify that the above named [naming all the witnesses who have testified], were by me first duly sworn [or affirmed] to testify the truth, the whole truth, and nothing but the truth, in the above entitled cause, and that the foregoing depositions, by them respectively subscribed, were reduced to writing by me [or if by any other person, name him, and say, by —, who is not interested in said action, in my presence], and were respectively subscribed by said witness in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or interested in the event of said action: [if there be adjournments, add] and said depositions were commenced at the time and place, in said notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 236.—Ohio forms.—

CAPTION.

A. B., }
No. — vs. } Suit pending in the — court for the county of —,
C. D. } Ohio.

Depositions of witnesses taken before me, —, a notary public in and for — county, state of —, in the above entitled and numbered cause pending in the — court of — county, Ohio, by virtue of the annexed commission [or notice] to be read on behalf of plaintiff in the trial of said cause, [state whether the parties, or their attorneys or either of them, were present].

—, first witness being duly sworn, deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that above named [naming all the witnesses] were by me first duly sworn [or affirmed] to testify the truth, the whole truth, and nothing but the truth, in the above entitled cause, and that the foregoing depositions by them respectively subscribed were reduced to writing by me and

subscribed by the said witnesses in my presence [or if by any other person, here insert his name and state that he was a disinterested person, and they were wirtten in the presence of the officer], and were taken at time and place in the annexed notice specified, and that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal, this — day of —, A. D. 19—.

[SEFL.]

(Official Signature.)

Return same as Kansas. See sec. 201.

Sec. 237.—Oregon forms.—

CAPTION.

A. B.,
No. — vs. } Suit pending in the — court of — county, Oregon.
C. D. }

Depositions of — and —, witnesses on behalf of plaintiff in the above styled cause, taken before me [name and official character], at my office in —, — county, —, on the — day of —, A. D. 19—, in accordance with the annexed commission issued out of the — court of — county, Oregon.

—, appearing as attorney for plaintiff, and —, appearing as attorney for defendant [or neither party appearing, as the case may be], —, the first witness being duly sworn, deposes as follows, to wit.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that on the — day of —, A. D. 19—, between the hours of — o'clock A. M. and — o'clock P. M., at my office in —, — county —, the foregoing deposition of — and —, the witnesses above named were taken before me, by virtue of and in accordance with the commission hereto attached; that such depositions were by me reduced to writing, and after being written each deposition was read over to the witness who made it, and was in my presence subscribed by him; that before said depositions were taken, each witness was sworn to tell the truth, the whole truth, and nothing but the truth, in answering the questions propounded to them therein.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 238.—Pennsylvania forms.—

CAPTION.

A. B.,
v.s
C. D. } Suit pending in the court of common pleas for —
county, Pennsylvania.

Answers and depositions of — and —, witnesses in the above styled cause, taken before me [name and official character] at my office in —, — county —, on the — day of —, A. D. 19—, between the hours of — o'clock A. M. and — o'clock P. M., under and by virtue of the annexed commission issued out of the court of common pleas for — county, Pennsylvania, and to me directed, for the examination of witness in the above styled cause.

—, first witness for plaintiff being duly sworn, deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that the foregoing answers and depositions of the witnesses — and —, were made before me, and each deposition was read over to the witness who made it, and was subscribed by him in my presence, he having been first duly sworn true answers to make to the interrogations propounded to him.

Witness my hand and seal of office, this — day of —, A. D. 19—.

[SEAL.]

(Official Signature.)

The notary should sign his name officially to each page of the deposition.

Return same as Missouri. See sec. 201.

Sec. 239.—Rhode Island forms.—

CAPTION.

A. B.,
No. — vs. } Suit pending in the — court of — county, Rhode
C. D. } Island.

Answers and depositions of — and —, witnesses in the above styled cause, taken before me [name and official character] at my office in —, — county, —, on the — day of —, A. D. 19—, I having first notified the adverse party of the time and place of taking such deposition. The witness —, being first duly sworn, deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

Be it remembered that in —, county of —, state of —, on the — day of —, personally appeared before me at —, who being by me first sworn to testify the whole truth, and nothing but the truth, gave the foregoing deposition, which was by me reduced to writing in his presence [or by him reduced to writing in my presence], and by him signed in my presence.

Taken — [by virtue of annexed commission at the request of —, as the case may be], to be used in the trial of an action pending in the — court — to be holden in —, within and for the county of —, in the state of Rhode Island, on the — day of —, A. D. 19—.

The adverse party was duly notified, as appears by return of the notification hereto annexed, and was present [or was not present].

I further state that I am not attorney or of counsel for either of said parties, nor interested in the result of said suit.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this — day of —, A. D. 19—.

[SEAL.]

(Signature and title of officer.)

Return same as Missouri. See sec. 210.

Sec. 240.—South Carolina forms.—

Persons taking depositions under special commission must be sworn. When two or more persons act as commissioners in one case, they may administer the oath to each other.

OATH OF COMMISSIONERS.

STATE OF —, }
County of —. } ss.

Do you solemnly swear that you shall, to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses, produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all, or any, of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners, in the commis-

[Here state whether plaintiff or defendant were present or represented by counsel.]

The witness —, of lawful age, being first duly sworn, deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, — [name of title of officer], do hereby certify that the above named [naming all the witnesses who have testified], were by me first duly sworn [or affirmed] to testify the truth, the whole truth, and nothing but the truth, in the above entitled cause, and that the foregoing depositions, by them respectively subscribed, were reduced to writing by me [or if by any other person, name him, and say, by —, who is not interested in said action, in my presence], and were respectively subscribed by said witnesses in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or interested in the event of said action; [if there be adjournments, add] and said depositions were commenced at the time and place, in said notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this — day of —, A. D. 19—. B

Then securely pack and seal the depositions, and mail, them addressed to the clerk of the court in which the action is pending, and indorsed as follows: — vs. —, depositions in said action on behalf of the —, taken, sealed up, addressed and transmitted by me.

[SEAL.]

(Signature and title of officer.)

For envelopes, see sec. 201, Kansas form.

Sec. 242.—Tennessee forms.—

CAPTION.

A. B. }
No. —, vs. } Suit pending in the — court of — county, Tennessee.
C. D. }

Depositions of — and —, witnesses for plaintiff in the above styled cause, taken before me [name and official character], at my office in —, — county, on the — day of —, A. D. —, upon commission [or notice], [here state whether the parties or their attorneys were present].

—, the first witness, aged — years, being duly sworn deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

The foregoing depositions were taken before me, as stated in the caption, and reduced to writing by me [*or* by witnesses in my presence]. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and delivered them to [*or*, put in the postoffice] without being out of my possession, or altered after they were taken.

Witness my hand and seal of office this — day of — A. D. 19—.

[SEAL.]

(Official Signature.)

My commission expires on the — day of —, A. D. 19—.

Return same as Missouri. See sec. 201.

Sec. 243.—Utah forms.—

CAPTION.

A. B., }
vs. } Suit pending in the — court of — county, Utah.
C. D. }

Depositions of — and —, witnesses taken in the above styled cause pending in the — court of — county, Utah, in accordance with the annexed commission, taken on behalf of plaintiff [state which of the parties or attorneys were present, if none of them was present so state].

—, first witness, being duly sworn, deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character of the officer], the commissioner named in said commission [notice *or* stipulation], do hereby certify that the above named [name all the witnesses], appeared before me and were by me first duly and severally sworn [*or*, affirmed] to testify the truth, the whole truth, and nothing but the truth, in answer to the above direct and cross-interrogatories propounded to them, in the above entitled cause, their evidence was then taken down, and to each witness his evidence was carefully read over and the same was corrected by him, after which he subscribed the same in my presence on the — day of —, A. D. —, at my office in the town of —, county of — and state of —. Said depositions were taken at the time and place mentioned in the annexed commission [*or* notice *or* stipulation] *or* say, and were commenced at the time and place in the annexed

notice *or* commission or stipulation] specified and continued by adjournment from day to day at the same place and between the same hours as in the said notice [*or*, commission specified, and for the reasons above stated].

In testimony whereof I have hereunto set my hand and official seal, this — day of —, A. D. —.

[SEAL.]

(Official Signature.)

Return same as Kansas. See sec. 201.

Sec. 244.—Vermont forms.—

CAPTION.

A. B. }
vs. }
C. D. } Suit pending in the — court of — county, Vermont.

Answers and deposition of —, a witness in the above styled cause now pending in the — court of — county, Vermont, taken on behalf of plaintiff by virtue of the annexed commission issued out of said court. The witness being duly sworn deposes and says:

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify, that on this — day of —, A. D. —, at my office in —, — county, —, —, the witness above named appeared before me and signed the foregoing deposition in my presence and solemnly swore that the same contains the truth, the whole truth, and nothing but the truth, in regard to said cause.

Witness my hand and seal of office, this — day of —, A. D. —.

[SEAL.]

(Official Signature.)

Envelope as per Texas. See sec. 201.

Sec. 245.—Virginia forms.—

CAPTION.

C. D. }
vs. }
A. B. } Suit pending in the — court of — county, Virginia.

The depositions of — and others, taken before me, —, a notary public of and for the state of —, pursuant to notice hereto annexed, at the office of —, in the state of —, on the — day of —, 19—, between the hours of 6 A. M. and 6 P. M., to be read as

evidence on behalf of —, in a certain cause now pending in the — court of —, wherein — is plaintiff and — is defendant.

[State whether or not counsel for either party is present]. — a witness for plaintiff being first duly sworn says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I, [name and official character], do hereby certify that the foregoing depositions were duly taken, reduced to writing and signed by the witnesses respectively before me, at the time and place mentioned in the caption hereto, in accordance with the annexed commission [or notice].

Witness my hand and seal of office, this — day of —, A. D. —.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 246.—Washington forms.—

CAPTION.

A. B. }
No. — vs. } Suit pending in the — court of — county, Wash-
C. D. } ington.

The depositions of —, taken on the — day of —, A. D. —, at the — office, in the city or town of —, county of —, state of —, and to be read as evidence in behalf of plaintiff [or defendant], on the trial of the above styled and numbered cause pending in the — court of — county, Washington.

CERTIFICATE.

STATE OF —. }
County of —. } ss.

I, [name and official character], do hereby certify that the foregoing depositions of —, the witness above named, was taken before me on the — day of —, A. D. —, at — o'clock —, at my office in —, — county, —, pursuant to the annexed commission [or notice]. And was by me written down, that the above named witness before examination was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and that said deposition was carefully read over to him by me, and was signed by him in my presence.

Witness my hand and seal of office, this — day of —, A. D. —.

[SEAL]

(Official Signature.)

Return same as Missouri. See sec. 201.

Sec. 247.—West Virginia forms.—**CAPTION.**

A. B. }
 No. — vs. } Suit pending in the — court for — county, West
 C. D. } Virginia.

Depositions of —, a witness taken before me [name and official character] at my office in —, — county, —, on the — day of —, A. D. —, pursuant to the annexed commission [*or*, notice], to be read as evidence in behalf of plaintiff, on the trial of the above styled cause pending in the — court of — county, West Virginia. The said witness being first duly sworn deposes and says.

CERTIFICATE.

STATE OF —, }
 County of —. } ss.

I [name and official character], do hereby certify that the foregoing deposition of — was duly taken, sworn to and subscribed by said witness before me at the time and place and within the hours prescribed by said annexed commission [*or*, notice]. And I do further certify that at the time of taking said depositions I was a duly qualified notary public [*or*, other officer].

Given under my hand and official seal, this — day of —, A. D. —.

[SEAL.]

(Official Signature)

Return same as Arkansas. See sec. 201.

Sec. 248.—Wisconsin forms.—**CAPTION.**

A. B. }
 No. — vs. } Suit pending in the — court of — county, Wisconsin.
 C. D. }

Deposition of —, a witness on the part of plaintiff in the above styled cause, taken before me [name and official character], at my office in —, — county, state of —, on the — day of —, A. D. —, between the hours of — A. M. and — P. M., under and by virtue of the annexed commission and upon the interrogatories and cross-interrogatories thereto attached. Said witness being first duly sworn deposes and says:

CERTIFICATE.

STATE OF —, }
 County of —. } ss.

I, A. B., a notary public in and for said county and state, do hereby certify that the foregoing deposition was taken before me at my

office in the town of — in said county, on the — day of —, A. D. 19—, commencing at — o'clock —, on said date and continuing until the same was completed; that it was taken at the request of plaintiff [or defendant, as the case may be], upon verbal [or, written] interrogatories; that the testimony of each witness was written by me in the presence of such witness [if written by another, state who, and that he was not interested in the suit], that such deposition was taken to be used in the cause styled in the above caption pending in the court of — county, Wisconsin, wherein — is plaintiff and — is defendant, that the reason for taking such deposition was [here state the reason] that a notice, of which the annexed is a copy was served upon — on the — day of —, 19—, [or that said deposition was taken pursuant to the annexed stipulation]; that the said witnesses were each, before examination, sworn to testify the truth, the whole truth and nothing but the truth, relative to said cause and that the testimony of each of said witnesses was, by me, carefully read to him and was then subscribed to by him in my presence.

Witness my hand and seal of office, this — day of —, A. D. 19—.

A. B., Notary Public.

Sec. 249.—Wyoming forms.—

CAPTION.

A. B. }
No. — vs. } Suit pending in the district court of — county,
C. D. } Wyoming.

Depositions of —, to be used in behalf of plaintiff on the trial of the above styled cause, taken before me at my office in —, — county, —, commencing at — o'clock, —, on the — day of —, A. D. —, in accordance with the annexed commission.

Said witness being first duly sworn deposes and says.

CERTIFICATE.

STATE OF —, }
County of —. } ss.

I [name and official character], do hereby certify that the foregoing deposition of —, the witness before named was taken before me at the time and place mentioned in the caption thereto attached, to be used in behalf of plaintiff, and that defendant was duly served with notice of the taking of said deposition as shown by the return of said notice hereto attached, that said witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and that his

deposition was written down by me and subscribed by him in my presence.

Witness my hand and seal of office, this — day of —, A. D.

—.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

For deposition in Federal Courts, see chapter XI.

CHAPTER XI.

DEPOSITIONS OF WITNESSES TO BE USED IN THE FEDERAL COURTS.

Sec.	Sec.
250. When and how taken.	254. Compelling attendance of witness.
251. Witnesses shall be sworn.	255. Forms for caption and certificate.
252. Under commission.	
253. How returned.	

Sec. 250.—When and how taken.—

The testimony of any witness may be taken in any civil cause pending in any district or circuit court by deposition *de bene esse* when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried and to a distance greater than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. Reasonable notice in writing, of the taking of such deposition must be given by the party or his attorney, or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of taking his deposition. (R. S. U. S., sec. 863.)

Sec. 251.—Witness shall be sworn etc.—

Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition or by the witness, in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent. (R. S. U. S., sec. 864.)

STATE OF TENNESSEE, }
Dickson County. } ss.

At Charlotte in said county on the 4th day of July, 1822, before me, James M. Ross, justice of the peace and one of the judges of the

county court of Dickson county, came personally John Mockbee, being about the age of fifty-one years, and after being carefully examined and cautioned and sworn to testify the whole truth, did subscribe the foregoing and annexed deposition, after the same was reduced to writing by him in his own proper hand." The certificate then proceeded to state the reason for taking such deposition, but nowhere states that the same was written in the presence of the magistrate; *held* that the defect was fatal and the deposition inadmissible.

Sec. 252.—Compelling attendance of witnesses.—

The Revised Statutes of the United States (art. 868) provide that in case of the failure or refusal of a witness to appear before an officer holding a commission to take his depositions, the clerk of any court of the United States for the district in which the witness lives, will, upon the application of either party, his agent or attorney, issue a subpoena for such witness, and in case he fails or refuses to attend and testify as required by such subpoena, the judge of the court may punish him for contempt under the same rules and in like manner as he may punish witnesses for failure to attend court when duly summoned.

The witness can not plead as a personal privilege that the evidence would tend to criminate himself or make him liable to any penalty, as the statutes¹ provide that no evidence given by any person in any judicial proceeding in this or any foreign country, shall ever be used against him, or his property, or estate in any criminal proceeding, or for the recovery of any penalty or forfeiture.

Perjury is an exception mentioned in the article above referred to.

Sec. 253.—Depositions under commission, and to perpetuate testimony.—

In any case where it is necessary in order to prevent a failure or delay of justice, any of the courts of the United States may grant a *dedimus potestatem* to take depositions

1. R. S. U. S. art. 860.

according to the common usage, and any circuit court, upon application to it as a court of equity, may, according to the usages of chancery direct depositions to be taken in *perpetuam rei memoriam* if they relate to any matters that may be cognizable in any court of the United States. The provisions of the preceding section shall not apply to any deposition taken under the authority of this section.

Sec. 254.—How returned.—

Every deposition taken under the two preceding sections shall be retained by the magistrate taking it until he delivers it with his own hand into the court for which it is taken, or it shall, together with a certificate of the reasons as aforesaid, of taking it, and of the notice, if any given, to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court; but unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment he is unable to travel and appear at court, such deposition shall not be used in the cause.²

Sec. 255.—Forms for taking depositions to be used in the Federal Courts.—

CAPTION.

A. B., Plaintiff, No. — vs. C. D., Defendant.	}	Suit pending in the United States Circuit Court for the ——— district of ———, suit pending.
---	---	---

Answers and depositions of ———, the witness named in the annexed notice, taken before me at my office in ———, ——— county, ———, on the

2. Laws in regard to taking depositions construed strictly. The provisions of the statute concerning depositions, being in derogation of the common law, must be strictly construed. *Shulte v. Thompson*, 15 Wall. 151, 21 L. Ed. 123.

— day of —, A. D. —, in accordance with said notice, to be read as evidence in behalf of plaintiff on the trial of the above styled cause.

The said — being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, deposes and answers as follows.

CERTIFICATE.

STATE OF —, }
County of —, } ss.

I [name and official character], do hereby certify that on the — day of —, A. D. —, personally came —, the witness named in the annexed notice, being about the age of — years, and — appeared as attorney for the plaintiff and — as attorney for the defendant, and said witness, being by me first duly cautioned and sworn to tell the whole truth, did depose and answer as above set forth, which answers and depositions were by me reduced to writing in the presence of said witness [or, were by said witness written down in my presence]³ and were read over to, and in my presence subscribed by him, and I do further certify that the reason for taking such deposition is;⁴ [here state the reason], that the opposite party had due notice of the time and place of taking the same as shown by the return on the said annexed notice, and that I am not an attorney nor of counsel for any party to the above styled cause nor am I in any way interested in the event of said suit.

Given under my hand and seal of office, this — day of —, A. D. —.

[SEAL.]

(Official Signature.)

Return same as Missouri. See sec. 201.

Depositions taken under commission from the Federal Courts are usually taken under the rules and regulations prescribed by statute of the state in which they are to be used.

3. Certificate must show that testimony was written down by the magistrate or in his presence. *Bell v. Morris*, 1 Pet. (U. S.) 351, 7 L. Ed. 174.

4. If the officer fails to state, in his certificate, the cause for taking the deposition it cannot be admitted in evidence, even though he appends the notice served on the opposite party which states that the witness is about to leave the United States. *Harris v. Wall*, 7 How. 693, 12 L. Ed. 875.

CHAPTER XII.

FEES OF NOTARIES PUBLIC AND FOR SERVICE
OF PROCESS ISSUED BY THEM.

Sec.		Sec.	
256.	In Arkansas.	262.	Process served by private individuals.
257.	In Kansas.	263.	Interpreter's fees.
258.	In Missouri.	264.	Fees to be posted.
259.	In Oklahoma.	265.	Fees, when due and how collected.
260.	In Texas.		
261.	Under United States Statutes.		

Sec. 256.—Fees in Arkansas.—

The fees of notaries public, officers serving process, witnesses, etc., in Arkansas, are as follows:

NOTARY'S FEES.

For noting a bill of exchange or promissory note for protest...	\$ 0 50
For entering protest of same.....	75
For registering protest.....	40
For notice to indorser and other parties, each.....	50
For taking each acknowledgment.....	50
For each marine protest.....	2 00
For other protest to secure insurance.....	2 00
For copy of record and papers in his office, for each one hundred words.....	5
For taking each deposition (not to exceed \$5.00 per day for the same party).....	2 00
For each additional day, if more than one day on the same deposition.....	2 00
For travel going to and returning from place of taking, per mile	5
For issuing each subpoena.....	50
For writ of attachment.....	75

SHERIFF'S FEES.

For serving every summons or attachment.....	\$0 50
For summoning each witness.....	50
For each <i>non est</i> on subpoena.....	10

For serving notice to take depositions.....	50
For committing person to jail.....	50
For mileage in serving each notice, subpoena or process, per mile	5

CONSTABLE'S FEES.

For summoning each witness.....	\$0 25
For serving attachment.....	75
For taking person to jail.....	75
For return of <i>non est</i> on subpoena or writ.....	10
Kirby's Dig. Ark. sec. 3500, 3501, 3511.	

Sec. 257.—Fees in Kansas.—

NOTARY'S FEES.

For protest and record of same.....	\$0 25
For each notice of protest.....	10
For certificate and seal of protest.....	25
For administering any oath, or giving any official certificate for the procurement of any pension bounty or back pay, <i>or</i> administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, <i>or</i> for all services rendered in perfecting any one voucher.....	15
For each subpoena, attachment or commitment.....	50
For swearing each witness.....	10
For each hundred words written in taking a deposition and certifying thereto.....	15
For taxing costs and making out fee bill, per folio.....	10
For taking and certifying affidavit.....	25
For making any record or copying any paper required to be copied, per folio.....	7
For taking an acknowledgment of a deed or other instrument in writing.....	25

SHERIFF'S AND CORONER'S FEES.

For serving and returning a subpoena or notice to take depositions, for the first person.....	\$0 50
For each additional person.....	25
For serving order of attachment and returning the same.....	50
For returning not found, each person.....	5
For each mile actually and necessarily traveled in serving a subpoena, attachment or notice, provided no mileage shall be charged when the distance does not exceed one mile....	10
For executing an order of commitment.....	25

CONSTABLE'S FEES.

For serving a subpoena on one witness	\$0 25
For each additional witness in the same case.....	15
For serving a notice or writ containing the name of but one person.....	25
For each additional person served.....	15
For committing to prison.....	25
For each mile actually traveled in the service of any subpoena, notice or attachment.....	10
G. S. Kan. (1909), secs. 3660, 3684.	

Sec. 258.—Fees in Missouri.—

NOTARY'S FEES.

For noting a bill of exchange or note for protest.....	\$0 15
For noting without protest.....	35
For entering protest of same.....	35
For registering a protest.....	35
For notice to each indorser or other party.....	15
For travel, per mile.....	8
For taking acknowledgment of a deed or other instrument, with a certificate and seal.....	50
For marine protest or fire insurance protest.....	5 00
For drawing a contract of a boatman, if required.....	75
For certificate, attested by seal.....	50
For taking the acknowledgment of parties to contract, attested by seal.....	50
For making an entry of a boatman not rendering himself on board agreeably to contract.....	15
For fixing seal thereto.....	10
For all copies of records and papers, for every hundred words..	15
For administering every oath.....	5
For every subpoena.....	75
For issuing attachment.....	75
For writing depositions, for every 100 words.....	15
For signing and certifying to depositions.....	35
For certificate to an affidavit.....	15

For all other services concerning boatmen and their contracts, the same fees as are allowed justices of the peace for like services. And for all other services, the same fees as are allowed by law to justices of the peace in like cases. (R. S. Mo. 1909, sec. 10712.

SHERIFF'S FEES.

For each mile actually traveled one way (outside of the limits of any incorporated city) in serving any process.....	\$0 05
For summoning each witness.....	25
For serving a writ of attachment.....	50
For serving a notice to take depositions.....	30
For taking any prisoner to jail.....	1 00
R. S. Mo. (1909) sec. 10702.	

In all counties having more than three hundred thousand inhabitants, they are entitled to the fees allowed by law to sheriffs and marshals of such counties.

Sheriffs and marshals are allowed fees as follows:

For summoning each witness.....	\$0 50
For each return of <i>non est</i> on a subpoena.....	25
For serving a writ of attachment, for each person actually brought before the officer issuing same.....	1 00
For entering a return of <i>non est</i> on an attachment.....	50
For serving a notice to take depositions.....	50
For committing any person to jail.....	1 00

CORONER'S FEES.

For serving each subpoena.....	\$0 25
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Sec. 259.—Fees in Oklahoma.—

NOTARY'S FEES.

For protesting bill or note and record of same.....	\$0 25
Each notice of protest.....	10
Certificate and seal to such protest.....	25
Taking and certifying affidavits.....	25
*Copying any paper required to be copied, per folio.....	07

TAKING DEPOSITIONS.

Each subpoena attachment or order of commitment.....	50
Swearing each witness.....	10
For each 100 words contained in such deposition and certificate thereto.....	15

The notary may hold depositions until fees are paid. In the R. L. Okla. sec. 5089, there is no provision or stipulation as to notaries' fees for taking acknowledgments. The law provides that a justice of the peace

shall receive fifty cents for each acknowledgment taken by him, but it nowhere stipulates or regulates the fees to be charged by notaries for such services.

*A folio consists of one hundred words of a writing, and two figures are counted as one word.

WITNESS FEES.

Witnesses shall receive for each day actually in attendance before the notary.....	\$1 00
For each mile traveled, going to and returning from, the place where such deposition is taken	05

No witness shall receive any mileage if he lives in less than one mile of the place where the deposition is taken.
R. L. Okla. sec. 3231.

Sec. 260.—Fees in Texas.—

NOTARY'S FEES.

Protesting a bill or note for non-acceptance or non-payment, registering and seal.....	\$2 50
Each notice of protest.....	50
Protest in all other cases, for each hundred words.....	20
Certificate and seal to such protest.....	50
Taking the acknowledgment or proof of any deed or other instrument of writing for registration, including certificate and seal.....	50
Taking the acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal.....	1 00
Administering an oath or affirmation with certificate and seal..	25
All certificates under seal not otherwise provided for.....	50
Copies of all records and papers in their office, including certificate and seal, if less than two hundred words.....	50
If more than two hundred words, for each one hundred words in excess of two hundred, in addition to the fee of fifty cents..	15
All notarial acts not otherwise provided for.....	50
Taking the depositions of a witness, for each one hundred words.	15
Swearing a witness to depositions, making certificate thereof with seal, and all other business connected with the taking of such deposition.....	50
N. M. 15	

No fee can be charged for permitting the examination of a paper or record.

A complete list of the fees permitted to be charged is required to be kept posted in a conspicuous place in every notary's office.

R. S. Tex. art. 2408.

SHERIFF'S FEES.

For summoning each witness.....	\$0 50
For serving a writ of attachment or committing a witness to prison.....	1 00

CONSTABLE'S FEES.

For serving each notice for the taking of depositions and copy of interrogatories.....	\$0 70
For serving each subpoena.....	50

WITNESSES' FEES.

For each day's attendance.....	\$1 00
For each mile traveled in going to and returning from the place of attendance.....	6

Sec. 261.—Notaries' fees under the United States statutes.—

The state statutes govern as to the fees to which notaries are entitled who take depositions, affidavits, etc., under the United States statutes. Witnesses are allowed:

For each day's attendance.....	\$1 50
For each mile traveled in going from his place of residence to the place of attendance, and returning.....	5
R. S. U. S. secs. 848, 914.	

Sec. 262.—Fees where notices or subpoenas are served by notaries or private individuals.—

No fees for serving notices to take depositions and subpoenas can be taxed as costs, except where they are served by one of the officers hereinbefore specified as being entitled to fees therefor. No fees are allowed notaries for such services, it being no part of their official duty to perform them.

Sec. 263.—Interpreters' fees.—

In TEXAS, interpreters are entitled to the same fees as witnesses.

In MISSOURI, they are entitled to thirty-five cents for interpreting the testimony of each witness, and for translating, every ten words, five cents, in addition to the compensation and mileage allowed witnesses.

The ARKANSAS and KANSAS statutes contain no provision. It would be proper perhaps to allow same fee as to witnesses.

Sec. 264.—Fees to be posted.—

The statutes of Arkansas and Texas require the notary to keep a fair list of his fees posted in his office at all times. Arkansas adds a penalty for failure so to do of forfeiture of all fees paid in during the time while this duty is neglected.

Sec. 265.—Fees when due and how collected.—

Notaries are entitled to their fees as soon as the work is done, and at common law they may hold possession of affidavits, acknowledgments, depositions or other papers until their fees are paid. The statutes of Kansas provide that a notary may hold depositions until all the costs of taking them are paid. In Texas a notary outside of the county in which suit is pending can not be compelled to take depositions until the fees are paid.

CHAPTER XIII.

NEGOTIABLE INSTRUMENTS.

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268.	Bill of exchange defined.	292.	When negotiable instruments fall due.
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Sec. 266.—Importance of duties of notaries.—

Among the most important duties which notaries are called upon to perform, are those connected with protesting negotiable instruments. It is impossible to understand and properly perform those duties without understanding at least the general principles of law governing such instruments. A brief summary of the law on the subject will therefore be given at the outset. The rules as to when, how, and what negotiable paper should be protested, will then be explained. The rules of the common law or law merchant, except a few statutory changes, (which are herein given), applies to negotiable instruments in Arkansas and Texas. In Kansas, Missouri and Oklahoma, the negotiable instruments law has been adopted, and the rules of the law merchant apply only where there is no provision in the negotiable instruments law governing the particular question.

Sec. 267.—Negotiable instrument defined.—

A negotiable instrument is one that is transferable from one person to another by delivery, or by indorsement and delivery, so as to vest in the person to whom it is transferred the legal title to the instrument and the property represented by it. They are always made payable to order or to bearer. If made payable to bearer the title passes by delivery. Any person who holds an instrument payable to bearer is, *prima facie* presumed to be the legal owner and is entitled to collect it.¹

The statutes of KANSAS, MISSOURI and OKLAHOMA provide, that a negotiable instrument must conform to the following requirements:

1 It must be in writing and signed by the maker or drawer.

1. Odell v. Gray, 15 Mo. 337, 55 Am. Dec. 147; Farmer v. Farmer, 1 Har. (Del.) 32; Robinson v. Brown, 4 Blackf. (Ind.) 128; Whitehall v. Winslo, 134 Mass. 343.

2 It must contain an unconditional promise or order to pay a sum certain in money.

3 It must be payable on demand or at a fixed or determinable time.

4 It must be payable to order or to bearer.

5 Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

G. S. Kan. sec. 5254; R. S. Mo. sec. 9972; R. L. Okla. sec. 4051.

Sec. 268.—Definition of bill of exchange.—

A bill of exchange is an unconditional written order from A. to B., directing B. to pay C. a sum certain of money therein named.²

An inland bill is one payable within, and a foreign bill one payable outside, the state or country in which it is drawn. In KANSAS, MISSOURI and OKLAHOMA. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand, or at a fixed or determinable future time, a sum certain, in money to order or to bearer.

G. S. Kan. sec. 5379; R. S. Mo. sec. 10096; R. L. Okla. sec. 4045; 2 Bouviers Law Dict.

Sec. 269.—Parties to bills—Form.—

The person who signs a bill is called the *drawer*. His name always appears upon the face of the bill. The person to whom it is directed is termed the *drawee*; upon accepting it he becomes the acceptor; the person to whom it is payable is called the *payee*; the owner is called the *holder*.

If the payee or other holder of a bill transfers it by indorsement, he is called an indorser; and the one to whom it is indorsed is called the indorsee.

2. Bouviers's Law Dict.

The following is the usual form of a bill:

\$100.

ST. LOUIS, May 1, 1900.

On demand (or at sight, or ten days after sight, or thirty days after date), please pay to John Smith, or order (or bearer), one hundred dollars, value received, and charge the same to my account.

THOMAS JONES.

TO SAMUEL FISK, ESQ.,
Topeka, Kas.

In KANSAS, MISSOURI and OKLAHOMA. A bill of exchange is not an assignment of funds in the hands of the drawee. It may be addressed to two or more drawers jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession. Where the drawee and drawer are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may, at his option treat the instrument as a bill of exchange or as a promissory note.

Sec. 270.—Foreign and inland bills.—

A foreign bill is one that is either drawn or payable in some other country or state. An inland bill is both drawn and payable in the same state. Unless the bill shows on its face to be foreign it may be treated as an inland bill.³

Sec. 271.—Contract of the drawer.—

The contract of the drawer of a bill of exchange is that the drawee is capable of making a binding contract of acceptance, and will accept the bill absolutely, in writing,⁴ when it is presented for that purpose, and will pay it, if it is duly presented and payment demanded on the day when it falls due; and that he, the drawer, will pay it in case of

3. G. S. Kan. secs. 5380-1-2-3; R. S. Mo. secs. 10098, 10099, 10100; R. L. Okla. secs. 4177, 4178, 4179. A bank draft drawn in California payable in Oklahoma is a foreign bill, *Morrison v. Farmers and Merchants' Bank*, 9 Okla. 697, 60 P. 273.

4. *Cummings v. Kent*, 44 Ohio St. 92, 4 N. E. 710, 58 Am. Rep. 796.

failure on the part of the drawee to pay or accept, if due notice is given him of the dishonor, and the bill, if foreign, is protested.

In KANSAS, MISSOURI AND OKLAHOMA, the drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it; but the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

In TEXAS the liability of the drawer becomes absolute upon the refusal of the drawee to accept the bill. It is not necessary either to protest the bill or file suit thereon.⁵

Sec. 272.—Contract of acceptance.—

Upon bills payable at sight, or at so many days after sight, or after demand, a presentment to the drawee for acceptance is absolutely necessary in order to fix the period when the bill is to be paid. Other bills need not be presented for acceptance without it is desired to fix the liability of the drawee.⁶

5. G. S. Kan. sec. 5314; R. S. Mo. sec. 10031; R. L. Okla. sec. 4111; R. S. Tex. art. 581; *Thatcher v. Mills*, 14 Tex. 13; *Durrone v. Hendrick*, 4 Tex. 495; *Wood v. McMeans*, 23 Tex. 481; *Carson v. Schott*, 26 Tex. 452.

6. *Kirby's Dig.* Ark. secs. 495-501; G. S. Kan. secs. 5385-5390; R. S. Mo. secs. 10103-10107; R. L. Okla. sec. 14112; *Burns v. Yokum*, 81 Ark. 127, 98 S. W. 956; *Green v. Keller*, 8 Kan. App. 110, 54 P. 333; *Bayless v. Marbut*, 124 Mo. App. 234, 101 S. W. 613; *Westbay v. Stone*, 112 Mo. App. 411, 87 S. W. 34. A bank telegraphed another bank, "Is D's check on you for \$350 good"? The response was "D's check is good for the sum named," held, not a promise on the part of the drawee bank to pay such check. *First National Bank v. Commercial Savings Bank*, 74 Kan. 606, 87 P. 746.

An acceptance is an agreement to pay a bill when due.

An acceptance may be general, or qualified, and is binding at common law, whether written or oral, and if written, whether written on the bill or a separate piece of paper. But the statutes of Arkansas, Kansas, Missouri and Oklahoma provide that an acceptance shall not be binding unless it is in writing and signed by the drawee, and that the holder may require it to be written on the bill; and, if such request be refused, he may treat the bill as dishonored. An unconditional promise in writing to accept the bill, before it is drawn, is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. In Kansas, Missouri and Oklahoma, the drawee is allowed twenty-four hours after presentment of a bill in which to decide whether or not he will accept it, and in the last named states, and also in Arkansas, if the drawee, to whom the bill has been delivered for acceptance destroys the bill or refuses to, at the end of twenty-four hours, or such other time as may be agreed on, return it to the holder, he will be deemed to have accepted the bill. In Texas a verbal acceptance of a bill will be enforced.⁷

Sec. 273.—Manner of accepting.—

The signature of the acceptor on the face of the bill is sufficient,⁸ though it is customary and the better practice, for the acceptor to write on the face of the bill the word "accepted" and then sign his name.⁹ When the bill is payable a certain number of days after sight, the acceptance

7. *Newman v. Shroder*, 71 Tex. 81, 8 S. W. 632; *Mileno National Bank v. Cobbs*, 115 S. W. (Tex. C. A.) 345.

8. *Fowler v. Gate City National Bank*, 88 Ga. 29, 13 S. E. 831; *Schwartz v. Barringer*, 20 La. Ann. 419; *Speer v. Pratt*, 2 Hill (N. Y.), 584, 36 Am. Dec. 600.

9. *Cortelyou v. Maibin*, 32 Neb. 697, 36 N. W. 159, 3 A. S. R. 284; *Vanstrum v. Liljengren*, 37 Minn. 191, 33 N. W. 555; *Speer v. Pratt*, 2 Hill (N. Y.), 582.

should be dated, and when a bill is drawn on a firm and accepted by one of its members, he should sign the firm name to the acceptance; if accepted by an agent he should sign his principal's name; and when a bill is payable in a large city, the acceptor may name the house at which he will pay it.

In KANSAS, MISSOURI and OKLAHOMA, the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. It must not express that the drawee will perform his promise by any other means than the payment of money. An acceptance to pay at a particular place is a general acceptance unless it expressly states, that the bill is to be paid there only, and not elsewhere.

G. S. Kan. secs. 5385, 5393; R. S. Mo. secs. 10102, 10110; R. L. Okla. sec. 4182, 4189.

Sec. 274.—Qualified acceptances.—

Qualified acceptances are of two kinds: first, conditional; and second, partial or varying from the tenor of the bill.

A conditional acceptance is an agreement by the acceptor to pay the bill upon the happening of a specified condition. Acceptances "to pay as remitted for," "to pay when in cash for the cargo of the ship *Thetis*," and "to pay when goods consigned to him (the drawee) were sold," have been held conditional.¹⁰

The holder may treat a conditional acceptance as a refusal to accept and treat the bill as dishonored,¹¹ or he may agree to the condition and treat the bill as accepted.

10. *Stevens v. Andrascoggin Water Power Co.*, 62 Me. 498; *Julian v. Showbrook*, 2 Wills C. P. 9.

The drawee wrote on a draft that had not been endorsed, that it would be accepted upon its return properly endorsed; held upon return of the draft endorsed by the payee the acceptance became absolute. *Mileno Nat. Bank v. Cobbs*, (Tex. C. A.) 115 S. W. 345.

11. *Ford v. Anglerodt*, 37 Mo. 50, 88 Am. Dec. 174; *Campbell v. Pettengill*, 7 Me. 126, 20 Am. Dec. 349.

If he does so he, as well as the acceptor, is bound by the condition and can collect the bill only in accordance with or upon the happening of the condition,¹² but upon the performance or happening of the condition the acceptance becomes absolute.¹³

Sec. 275.—Partial or varying acceptance.—

A partial or varying acceptance varies from the tenor of the bill; as where it engages to pay part of the sum or to pay at a different time from that at which the bill is made payable by the drawer.¹⁴

So where a bill is drawn payable generally in a certain city or town, an engagement to pay it at a different city or to pay it at a certain house "**only and not otherwise,**" is a qualified acceptance; but an acceptance to pay at a certain place in a town or city in which the bill is payable generally, is not a qualified acceptance, but is, in effect, absolute; as, for instance, where it is accepted thus:

Accepted to be paid at the Bank of Commerce in St. Louis, Mo.
A. B. ¹⁵

12. *Defee v. Smith*, 43 Ark. 221; *Perry v. Barret*, 18 Mo. 140; *Gamage v. Hutchins*, 23 Mo. 565; *Ford v. Anglerodt*, 37 Mo. 50, 88 Am. Dec. 174; *Andrews v. Baggs*, Minor (Ala.), 173, 12 Am. Dec. 47; *Green v. Raymond*, 9 Neb. 295, 2 N. W. 881; *Cummings v. Hummer*, 61 Ill. App. 393.

13. The acceptance of an order upon condition that lumber to the value of the order is to be placed upon a certain siding, becomes absolute when the lumber is placed upon the siding. It can not be changed or construed to be conditioned for the amount due by drawee to drawer for lumber. *Fletcher v. Simms & Graham*, 75 Ark. 162, 86 S. W. 993. An acceptance, upon delivery of certain maps, becomes absolute upon the delivery of such maps. *Everard v. Warner*, 36 Minn. 383, 31 N. W. 353.

14. Changing the time of payment does not affect the negotiability of the instrument. 9 Neb. 295, 2 N. W. 881. It may be made payable in installments. *Bridge v. Livingston*, 11 Iowa 57; *Rice v. Ragland*, 10 Humph. 545, 53 Am. Dec. 737.

15. *Perry v. Barrett*, 18 Mo. 140; *Todd v. State Bank*, 3 Bush (Ky.), 626; *Troy City Bank v. Lanman*, 19 N. Y. 477. It may be

Sec. 276.—Qualified acceptance under negotiable instruments law.—

Under the negotiable instruments law qualified and partial, or varying acceptances all come under one head and are defined as follows:

An acceptance is qualified which is:

(1) Conditional—that is to say, which makes payment by acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial—that is to say, an acceptance to pay part only, of the amount for which the bill is, drawn;

(3) Local—that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.

G. S. Kan. sec. 5394; R. S. Mo. sec. 10111. Comp. Laws Okla. sec. 4575.

Sec. 277. — Checks—Definition—Parties—Presentment Protest—Notice.—

A check is an unconditional written order to a banking house to pay a person therein named, or to him or his order, or the bearer, instantly, on demand a certain sum of money.¹⁶

Checks are a species of bill of exchange. The names of the parties to a check are the same as those of the parties to a bill. Their contracts are also the same, except that negligence of the holder in not making due presentment, or not giving notice of dishonor, does not discharge the drawer from liability unless he has suffered some loss from the holder's negligence, and then only to the extent of the loss or injury

accepted for a smaller amount than that named in the bill. *Brinkman v. Hunter*, 73 Mo. 172, 39 Am. Rep. 492.

16. *State v. Warner*, 60 Kan. 94, 55 P. 342; *State v. Murphey*, 141 Mo. 267, 42 S. W. 936; *Farmersville National Bank v. Greenville National Bank*, 84 Tex. 40, 19 S. W. 334.

caused by the delay. He is only entitled to such presentment and notice as will save him from loss.

Protest is in no case necessary to hold him; but a check payable out of the state in which it is drawn is to be regarded as a foreign bill so far as indorsers are concerned, and if not paid should be protested, in order to hold them liable.¹⁷

Where a statute provides that inland bills may be protested, checks come within the meaning of the term "bills."

Drafts are a species of check.

Under the negotiable instruments law a check is defined to be a bill of exchange, drawn on a bank payable on demand, and provides that it must be presented for payment within a reasonable time; that where a check is certified by the bank upon which it is drawn, the certification is equal to an acceptance, which, when done at the instance of the holder, relieves the drawer and all indorsers.¹⁸

Sec. 278.—Promissory notes.—

"A promissory note, or note of hand, as it is often called, is an open promise in writing by one person to pay another person therein named, or to his order, or to bearer, a specified sum of money, absolutely and at all events."¹⁹

17. *Champion v. Gordon*, 70 Pa. St. 474, 10 Am. Rep. 681. A draft drawn on a company outside of the state is a foreign bill. *Bank of Ladonia v. Bright Coy Commission Co.*, 139 Mo. App. 110, 120 S. W. 648. A bank draft drawn in California payable in Oklahoma is a foreign bill. *Morrison v. Farmers & Merchants Bank*, 9 Okla. 697, 60 P. 273. If the payee fails to present the check within a reasonable time, and the bank fails, such payee must stand the loss. *Greeley v. Cascade County*, 22 Mont. 580, 57 p. 274.

18. Negotiable instruments act, secs. 192-195; G. S. Kan. secs. 5438-5441; R. S. Mo. secs. 10155-10158; Comp. Laws Okla. secs. 4619-4622. The drawee of a check is not liable on a purported contract of acceptance, aside from the check, unless the language clearly imports an obligation to pay the check. *First National Bank v. Commercial Savings Bank*, 74 Kan. 606, 87 P. 746.

19. *Daniel on Neg. Inst.* sec. 28; *Dorsey v. Wolff*, 142 Ill. 589; 32 N. E. 495, 34 A. S. R. 99, 18 L. R. A. 428.

The negotiable instruments act defines a negotiable promissory note to be an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money, to order or to bearer, if drawn to the makers own order it is not complete until indorsed by him.²⁰

FORM OF NOTE.

\$10.00

ST. LOUIS, Jan. 10, 1900.

One year after date I promise to pay to A. B. or order (or bearer), ten dollars, at the Bank of Commerce, value received.

JOHN SMITH.

FORM FOR JOINT NOTE WAIVING PROTEST AND PROVIDING FOR ATTORNEY'S FEES.

\$500.00

FAYETTEVILLE, ARK.,—19—.

Three months after date, without grace, for value received we jointly and severally promise to pay to the order of A. B. at his office in Fayetteville, Arkansas, the sum of five hundred dollars in gold coin of the United States of America, of the present standard of weight and fineness, with interest at the rate of six percent per annum from maturity until paid. The makers, sureties, guarantors, endorsers and assignors of this note hereby jointly and severally waive presentment for payment, notice of nonpayment protest and notice of protest, and consent that time of payment may be extended without notice thereof. In case this note is placed in the hands of an attorney for collection, or is collected by suit we agree to pay 10 per cent additional on the principal and interest then due as attorneys fees.

P. O. ———

Due ———

Sec. 279.—Parties to a note.—

The person by whom a note is signed is called the **maker**; the person to whom it is payable the **payee**, and a person who transfers it by indorsement an **indorser**; the person to whom it is indorsed the **indorsee**. The owner is called the **holder**.

20. G. S. Kan. sec. 5437; R. S. Mo. sec. 10154; Comp. Laws Okla. sec. 4618.

Sec. 280.—Contracts of parties to a note.—

By executing a promissory note the **maker** engages absolutely to pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.²¹

The contract of one who indorses a note is the same as that of an indorser of an inland bill of exchange, except that the maker stands towards him in the double relation of drawer and acceptor.²²

Failure on the part of the holder to demand payment at maturity and to give the indorser notice of dishonor if the note is not paid, will discharge him from all liability thereon.²³

In Texas the holder of a promissory note may fix the liability of an indorser by bringing suit on the note at the next term of the court after the maturity of the note. Sayles' Civ. Stats. arts. 304, 306.

Sec. 281.—Rights, duties and obligations of payees and holders.—

While the payee remains the holder, his duties are, first, to present the bill for acceptance and payment within the proper time; second, to give the drawer notice of dishonor, and if it is a foreign bill, to have it protested in case of failure on the drawee's part to accept or pay. In case of failure in the performance of either duty, the drawer is discharged.

The duties of a subsequent holder are the same as those of the payee, so far as the drawer is concerned. His duties towards indorsers are the same as his duties to the drawer.²⁴

21. *Smith v. Mead*, 3 Conn. 253, 8 Am. Dec. 183; *Banking Association v. Zorn*, 14 S. C. 444, 37 Am. Rep. 733.

22. *Doone v. Sherwin*, 20 Colo. 234, 38 P. 56; *Shaw v. Jacobs*, 89 Iowa, 713, 56 N. W. 684, 21 L. R. A. 440, 48 A. S. R. 411; *Cover v. Myers*, 75 Md. 406, 23 Atl. 850, 32 A. S. R. 394.

23. *Ruddell v. Walker*, 7 Ark. 457; *Anderson v. Yell*, 15 Ark. 9; *Jones v. Robinson*, 11 Ark. 504, 54 Am. Dec. 212.

24. *Craig v. Price*, 33 Ark. 633; *Hart v. Smith*, 15 Ala. 807, 50 Am. Dec. 161; *Burns v. Virginia Life Ins. Co.*, 124 N. C. 9, 32

Sec. 282.—Liability of indorser.—

An indorsement implies an undertaking on the indorser's part, that the antecedent parties upon the bill had competent authority to draw and indorse it, that neither the instrument nor the indorsements thereon are forged, and that he has a good title to the bill and a right to transfer the same. In other respects the contract of an indorser is exactly similar to that of drawer.²⁵

In KANSAS, MISSOURI and OKLAHOMA, one who indorses without qualification warrants, to all subsequent holders in due course (1) that the instrument is genuine, and in all respects what it purports to be, that he has a good title to it, and that all prior parties had capacity to contract; (2) that the instrument is at the time of his indorsement valid and subsisting; and in addition he engages, that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor. And that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. Where a person places his indorsement on an instrument negotiable by delivery he incurs all of the liabilities of an indorser.

G. S. Kan. secs. 5319, 5320; R. L. Okla. sec. 4116.

Sec. 283.—Indorsement—Requisites.—

Bills are usually transferred by indorsement written upon the back thereof. They may be transferred by delivery alone if payable to bearer, or where indorsed by the preceding holder in blank.

S. E. 323; *Cox v. New York National Bank*, 100 U. S. 704, 25 L. Ed. 739.

25. *Smith v. Corege*, 53 Ark. 295, 14 S. W. 93; *Lake v. Little Parking and Trust Co.*, (Ark.) 90 S. W. 847; *Tally v. Burtis*, 45 Kan. 147, 25 P. 603; *Herrick v. Edwards*, 106 Mo. App. 633, 81 S. W. 466.

The negotiable instruments law provides that an indorsement must be written on the note itself or upon paper attached thereto; the signature of the indorser, without additional words is a sufficient indorsement; that the indorsement must be an indorsement of the entire instrument, but where the instrument has been paid in part it may be indorsed as to the residue.

G. S. Kan. secs. 4082, 4083; R. S. Mo. secs. 10002, 10003; R. L. Okla. secs. 4466, 4467.

Sec. 284.—Kinds of indorsement.—

An indorsement may be either special or in blank, and may be either restrictive, qualified or conditional. A special indorsement, specifies to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery. An indorsement is restrictive which either. (1) Prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person; but the mere absence of words implying power to negotiate does not make an indorsement restrictive.

A restrictive indorsement confers upon the indorsee the right: (1) To receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so; but all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Except where the indorsement bears date after the maturity of the instrument, every negotiation is deemed, *prima facie*, to have been effected before the instrument was over due, and except where the contrary appears every

indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorsers signature the words "without recourse," or any words of similar import. Such indorsement does not impair the negotiability of the instrument.

Negotiable Instruments Act, secs. 40-45, 52, 53; G. S. Kan. secs. 5286-5292, 5298, 5299; R. S. Mo. secs. 10004-10008, 10015, 10016; R. L. Okla. 4086, 4087, 4480, 4480a.

Sec. 285.—Indorsers who are not otherwise parties to the note.—

IN ARKANSAS and TEXAS where any one other than the payee indorses his name in blank on the back of a note at the time of its inception and before it is delivered to the payee, the courts have held that his engagement is to be presumed to be that of a joint maker, and that in the absence of proof to the contrary, he is bound to the payee and his assigns in that capacity, and in those states it is necessary to demand payment of a party so signing in order to hold indorsers.²⁶ This was also the law in Missouri until the adoption of the negotiable instruments law.²⁷ Sec. 71 of the negotiable instruments law provides when a person, not otherwise

26. *Jones v. Bank of Pine Bluff*, 80 Ark. 285, 96 S. W. 1060; *Lake v. Little Rock Transit Co. (Ark.)*, 90 S. W. 847; *Carr v. Rowland*, 14 Tex. 275; *Cook v. Southwick*, 9 Tex. 615. When the signature of an irregular indorser is placed on the note above the signature of the payee the presumption is that it was placed there at the time of the making of the note. *Rhode v. Alley*, 27 Tex. 443; *Carr v. Rowland*, 14 Tex. 275; *Cook v. Southwick*, 9 Tex. 615.

27. *Lewis v. Harvey*, 18 Mo. 74; *Seymore v. Farrell*, 51 Mo. 95; *Cahn v. Dutton*, 60 Mo. 297; *Oexner v. Loer*, 106 Mo. App. 412, 80 S. W. 690; *First National Bank v. Guardian Trust Co.*, 187 Mo. 494, 86 S. W. 109; *Walker v. Dunham*, 135 Mo. App. 396, 115 S. W. 1086; *Heaton v. Dickson*, (Mo.) 133 S. W. 159.

a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser.

(1) If the instrument is payable to a third person he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of drawer or maker, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

G. S. Kan. sec. 5317; R. S. Mo. sec. 10034; R. L. Okla. sec. 4114.

Sec. 286.—Coupon bonds.—

A coupon bond is a negotiable instrument, and resembles a promissory note in many important particulars. It differs from a note in form, in being under seal and in being accompanied by coupons. Such bonds are usually made payable to "bearer," and when so worded may be transferred by delivery like a promissory note payable to bearer.²⁸

Sec. 197 of the negotiable instruments law provides that the owner or holder of any corporate or municipal bond or obligation, except such as are designated to circulate as money, heretofore or hereafter issued, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon that such instrument is his property. G. S. Kan. Sec. 5443.

28. *Barrett v. County Court of Schuyler Co.*, 44 Mo. 197; *Board v. Texas, etc. R. Co.*, 46 Tex. 316; *San Antonio v. Lane*, 32 Tex. 405; *Courand v. Vallimer*, 31 Tex. 401; *State v. Cobb*, 64 Ala. 127; *Myers v. York, etc. R. Co.*, 43 Mo. 239; *McLelland v. Norfolk Southern R. Co.*, 110 N. Y. 469; *American National Bank v. American Wood Paper Co.*, 19 R. I. 149, 32 Atl. 305, 29 L. R. A. 103, 61 A. S. R. 746; *Little Rock v. National Bank*, 98 U. S. 308, 25 L. Ed. 108; *County of Cass v. Gillett*, 100 U. S. 585, 25 L. Ed. 695; *Providence Tp. v. Hasley*, 117 U. S. 336, 29 L. Ed. 904; *Hotchkiss v. National Shoe Co.*, 21 Wal. 354, 22 L. Ed. 645.

**Sec. 287.—When bills should be presented for acceptance—
Time allowed drawee.—**

A bill of exchange, payable so many days after sight or demand, should be presented for acceptance within a reasonable time after it comes into the possession of the holder, in order to avoid any loss which the drawer might suffer from delay.²⁹ It is difficult to say exactly what will be considered a reasonable time, for the reason that each case is governed by the particular circumstances connected with it. Such a bill may be negotiated before it is presented for acceptance, and it seems a holder may retain it in his possession at least one day before sending it off for presentment, or negotiating it.³⁰

Presentment should be made during the usual business hours, and the bill should be actually exhibited.³¹

The drawee has a right where the common law is still in force, to demand a reasonable time, usually, twenty-four hours within which to examine his accounts with the drawer, and decide whether to accept or not.³² During that time the bill may be left with him. But if the drawee refuses to accept when the bill is presented to him, or demands the above delay and refuses to accept before the expiration of the time, or at the expiration fails to notify the holder whether he will accept or refuse the bill, it should be immediately protested and notice given; and in all the states if the drawer to whom a bill is delivered for acceptance destroys it, or refuses to return or accept it within the twenty-four hours, or the time allowed by the holder, the same steps should be taken.

29. *Green v. Keller*, 8 Kan. App. 110, 54 P. 333; *Fuggett v. Nixon*, 44 Mo. 295; *Nichols v. Blakemore*, 27 Tex. 586; *Chambers v. Hill*, 26 Tex. 472; *Nelson v. Castle*, 105 Mo. App. 187, 79 S. W. 730.

30. A delay of five days, excluding Sunday, without excuse, is sufficient to discharge the drawer of the bill. *Burns v. Yokum*, 81 Ark. 127, 98 S. W. 956. See, also, *Linnville v. Welch*, 29 Mo. 203.

31. *Leftley v. Mills*, 4 Tenn. 170.

32. *Wilcox v. Beal*, 3 La. Ann. 404; *Case v. Bert*, 15 Mich. 82.

The negotiable instruments law provides that presentment for acceptance must be made;

(1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix maturity of the instrument;

(2) Where the bill expressly stipulates that it shall be presented for acceptance;

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawer.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Except as herein otherwise provided, the holder of a bill which is required to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so the drawer and indorsers are discharged. The negotiable instruments law, as the law merchant, allows the drawee twenty-four hours in which to determine whether he will accept the bill.

G. S. Kan. secs. 5396, 5397, 5389; R. S. Mo. secs. 10113, 10114, 10106. R. L. Okla. secs. 4193-4195.

Sec. 288.—Presentment, when unnecessary.—

Presentment for acceptance is unnecessary where the bill is payable at a certain date, except for the purpose of binding the drawee, who is not in any way liable on the bill till he accepts it. Such a bill may be presented for acceptance, if the holder desires it, at any time before maturity; and if so presented and not accepted, it should be immediately protested, if a foreign bill, and notice given to the drawer and indorsers in any case.³³

33. Daniel on Neg. Inst. sec. 454; Glasgow v. Copeland, 8 Mo. 268; Evans v. Bridges, 4 Port. (Ala.) 348; Davis v. Berne, 10 Ga. 329; Carmichael v. Pennsylvania Bank, 4 How. (Miss.) 567, 35 Am. Dec. 408; Walker v. Stetson, 19 Ohio St. 400, 2 Am. Rep. 405; Townsley v. Summerall, 2 Pet. U. S. 170, 7 L. Ed. 386.

In KANSAS, MISSOURI and OKLAHOMA, it is not necessary to present, for acceptance, a bill, drawn payable elsewhere than at the residence or place of business of the drawee, when there is not time, by the use of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due.

In TEXAS, it is not necessary to protest an inland bill in order to fix the liability of the drawer, but is necessary to either protest or file suit in order to fix the liability of the indorser.³⁴

G. S. Kan. sec. 5400; R. S. Mo. Sec. 10117; R. L. Okla. sec. 4198; R. S. Tex. art. 581.

Sec. 289.—Presentment excused when—Dishonor.—

The negotiable instruments law provides that presentment for acceptance is excused, and the bill may be treated as dishonored by nonacceptance in either of the following cases:

(1) When the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment cannot be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

A bill is dishonored by nonacceptance:

(1) When it is presented for acceptance, and such an acceptance as is prescribed by this act is refused or can not be obtained.

(2) When presentment for acceptance is excused and the bill is not accepted.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonaccep-

34. Thatcher v. Mills, 14 Tex. 17; Carson v. Russell, 25 Tex. 452.

tance or he loses his right of recourse against the drawers and indorsers.

G. S. Kan. secs. 541-543; R. S. Mo. secs. 10118-10120; R. L. Okla. secs. 4198-4201.

Sec. 290.—To whom presentment for acceptance should be made.—

A bill should be presented for acceptance either to the drawee, or some one authorized to answer for him.³⁵

If the drawee can not be found and any other person has been indicated to be resorted to in case of need (*au besoin*), it should be presented to him.³⁶

If the drawee is dead, presentment should be made to his administrator.

If the bill is drawn on a partnership, presentment to either partner is sufficient. If it is drawn on two or more persons who are not partners, presentment to and acceptance by each of them is necessary.³⁷

It is necessary for the party demanding acceptance to present the bill at the time he makes the demand.³⁸

The negotiable instruments law provides that presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is over due, to the drawee, or some person authorized to accept, or refuse acceptance, on his behalf, and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to all of them, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2)

35. *Schuchardt v. Hall*, 36 Md. 590, 11 Am. Rep. 514; *Wiseman v. Chiappella*, 23 How. (U. S.) 368, 16 L. Ed. 466.

36. Story on Bills, sec. 229.

37. *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207. When drawers are not partners bill should be presented to each. *Union Bank v. Willis*, 8 Metc. (Mass.) 504, 41 Am. Dec. 541.

38. *Union Bank v. Willard*, 5 Metc. (Mass.) 216.

when the drawee is dead, presentment may be made to his personal representative; (3) where he has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of his creditors presentment may be made to him or his trustee or assignee. G. S. Kan. sec. 5398; R. S. Mo. sec. 10115; R. L. Okla. sec. 4195.

Sec. 291.—Where presentment should be made.—

A bill should be presented to the drawee for acceptance either at his residence or place of business, without any regard to its being drawn payable generally, or at a particular place specified.³⁹

Where the drawee has his place of business in one town and his dwelling house in another, it may be presented at either place.⁴⁰

In case the bill is directed to the drawee at a particular place, it is to be considered dishonored if the drawee has absconded. But if he has merely changed his domicile to some other part of the state, it is incumbent on the holder to find him and have the bill presented there. If the drawee has left the state, the bill may be protested.

It is not sufficient, however, to merely present a bill at the drawee's residence or place of business. Without some one is found who is authorized to accept or refuse acceptance, the drawer should be sought for and the bill presented to him in person.⁴¹ If he is out of town, but expected back the next day, the notary should await his return.

39. A bill was drawn payable in London on a party residing in Liverpool, a presentment in Liverpool was sufficient. *Mason v. Franklin*, 3 Johns. (N. Y.) 202; *Boot v. Franklin*, 3 Johns, 207.

40. Story on bills, sec. 236.

41. In making demand, the person ought, if possible to see the drawee personally, or some agent appointed by him to accept, and if he can not find him at his house or place of business, he must make diligent inquiry for him. *Wiseman v. Chiappella*, 23 How. (U. S.) 368, 16 L. Ed. 597. See, also, *Bank v. Triplett*, 1 Pet. (U. S.) 25, 7 L. Ed. 433. If the drawee has absconded the bill may be protested. Par-

Sec. 292.—When negotiable instruments fall due.—

It is necessary, as we have seen, to present a negotiable instrument for payment on the very day on which it falls due, and for that reason it is very important to understand exactly when such instruments mature.

At common law, bills and notes do not mature on the day upon which they appear on their faces to be payable, but on the third day thereafter, except where they are payable on demand.⁴² In calculating when a bill or note will fall due, the day of its date should be excluded and the day on which it is payable included, and to the result three days added.⁴³ The third day of those days will be the one on which the instrument should be presented. Thus, where the note is due thirty days after date and is dated the first of July, it would appear on its face to be due the thirty-first of July; adding to this result three days, we find it matures the third of August. The three days which should be so added are called days of grace.⁴⁴

They are so called because originally allowed merely as an accommodation. The custom to allow them has, however, ripened into law, and they may now be claimed as of right.⁴⁵

sons on Notes and Bills, sec. 339; Story on Bills of Exchange, sec. 235; *Wolfe v. Jewett*, 10 La. 384. Inquiry by the notary of strangers to the bill is not sufficient, if he might have found the makers residence by inquiring of parties to the bill. *Earnest v. Taylor*, 25 Tex. Supp. 39.

42. *Bouvier's Law Dict.* (title, Grace).

43. *McCoy v. Farmer*, 65 Mo. 244; *Moore v. Halliman*, 25 Tex. Supp. 81; *Young v. Beuthysun*, 30 Tex. 762; *Ramer v. Broder*, 107 Cal. 282, 40 P. 430; *Avery v. Stewart*, 2 Conn. 69, 7 Am. Dec. 240.

44. *Farmers National Bank v. Salina Paper Mfg. Co.*, 58 Kan. 207, 48 P. 863; *Skidmore v. Little*, 4 Tex. 301; *Campbell v. Lane*, 25 Tex. Supp. 93; *Davis v. Eppinger*, 18 Cal. 378, 79 Am. Dec. 184; *Taylor v. Jacoby*, 2 Pa. St. 495, 45 Am. Dec. 615.

45. *Bouvier's Law Dict.*

In KANSAS, MISSOURI and OKLAHOMA, under the negotiable instruments law every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday, when that entire day is not a holiday.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

G. S. Kan. secs. 5338, 5339; R. S. Mo. secs. 10055, 10056; R. L. Okla. sec. 4135.

Sec. 293.—Paper on which grace is allowed.—

At common law, bills of exchange, orders for money payable at some future date and promissory notes are entitled to "grace" and payment of same can not be enforced until three days after the date of maturity therein specified;⁴⁶ checks are not entitled to "grace"⁴⁷ and it has been held in some jurisdictions that bills, drafts and orders payable on demand are not entitled to "grace".⁴⁸

46. *Wards v. Sparks*, 53 Ark. 519, 14 S. W. 898, 10 L. R. A. 703; *Blacker v. Ryan*, 65 Mo. App. 230; *Watkins v. Willis*, 58 Tex. 521; *Brown v. Chancellor*, 61 Tex. 437; *Bell v. Chicago Bank*, 115 U. S. 373, 29 L. Ed. 409. Limitation does not begin to run until three days after the date of maturity specified in the note. *Watkins v. Willis*, 58 Tex. 521.

47. *Davenport First National Bank v. Price*, 52 Iowa 570, 3 N. W. 639.

48. *Brown v. Chancellor*, 61 Tex. 437.

Sec. 294.—Time of presentment when the last day of grace is a legal holiday.—

The rule at common law is, that where the last day of grace falls on Sunday or a legal holiday, the bill or note should be presented on the second day of grace; if the second and third days of grace are both holidays, then it should be presented on the first. If all the days of grace are holidays, it should be presented on the day on which it is on its face payable. If the first or second day of grace falls on Sunday or a holiday, the rule is not altered as to presentment on the third day of grace.

Sec. 295.—Statutory rules as to days of grace.—

In ARKANSAS and TEXAS, three days of grace are allowed on negotiable instruments. The statutes of Arkansas provide that, the remedy on bills, foreign and inland, and on promissory notes, shall be governed by the rules of the law merchant, as to days of grace, protest and notice. The statutes of Texas provide, that three days of grace shall be allowed on all bills of exchange and promissory notes assignable or negotiable by law. In Kansas, Missouri and Oklahoma days of grace have been abolished by the adoption of the negotiable instruments law. (see sec. 292).

Kirby's Dig. Ark. sec. 508; R. S. Tex. art. 593.

Sec. 296.—Time for presentment or demand.—

The statutes of KANSAS, MISSOURI and OKLAHOMA provide: Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment on his part; but, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. Where the instrument is not payable on demand, presentment must be made on the day it falls due.

Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that, in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Practically the same rules apply in Arkansas and Texas where the law merchant is still in force, except that in those states presentment should be made on the last day of grace.

In KANSAS, MISSOURI and OKLAHOMA, when an instrument falls due on Saturday, Sunday or a legal holiday it is payable, and should be presented for payment on the next succeeding business day, except that instruments payable on demand may be presented before twelve o'clock noon on Saturday, when such day is not a legal holiday.

In ARKANSAS when the last day of grace falls on Sunday or a legal holiday presentment should be made on the next preceding day, or second day of grace. This is also the rule under the law merchant.⁴⁹

Kirby's Dig. sec. 501; G. S. Kan. secs. 5323, 5324, 5338; R. S. Mo. secs. 10040, 10041, 10055; R. L. Okla. sec. 4135.

Sec. 297.—Specification of place of payment.—

It is not sufficient, to make a note payable at a particular place, that there should be a memorandum of the place where it is payable at the foot or margin thereof, but it should be in the body of the note itself, and constitute a part thereof. This is equally true as to bills. If the intention of the maker or drawer of the instrument appears to have been to make the memorandum a part of the con-

49. *Kuntz v. Temple*, 48 Mo. 71; *Sanders v. Ochletree*, 5 Port. (Ala.) 73, 30 Am. Dec. 551; *Roberts v. Wald*, 61 Minn. 291, 63 N. W. 739; *Capital National Bank v. American Exchange Bank*, 51 Neb. 707, 71 N. W. 703; *Adams v. Otterback*, 15 How. (U. S.) 539, 14 L. Ed. 805.

tract, the note should be considered payable at the place specified.

The safer course is to present such an instrument at the place specified in the memorandum, and if that place is neither the dwelling house nor place of business of the party upon whom demand is to made, and no one is found there who has been instructed to answer for him, then to treat it as though payable generally.⁵⁰

Sec. 298.—Payment.—

Negotiable instruments are always payable in money. Sometimes they are payable in a foreign currency, sometimes in gold; but usually the kind of money is not expressed. Where they are payable in gold, it may be demanded.⁵¹ When payable in a foreign currency, the amount due should be ascertained and determined by the rate of exchange or the value of such foreign currency, and the amount paid in legal tender of the United States. When the kind of money is not expressed, money of account of the United States should be understood.⁵²

Sec. 299.—Where instrument should be presented when no place of payment is specified.—

Where a negotiable instrument is payable generally, it may be presented for payment either at the maker's or drawee's place of business, or at his dwelling house, even though they are in different towns. Personal demand is unnecessary.⁵³

50. Story on Prom. Notes, sec. 59; *Farnsworth v. Mullin*, 164 Mass. 112, 41 N. E. 131; *Woodworth v. Bank of America*, 19 Johns, (N. Y.) 391, 10 Am. Dec. 239.

51. *Wilburn v. Greer*, 6 Ark. 255; *Cockrill v. Kirkpatrick*, 9 Mo. 697; *Bell v. Joyce*, 33 Tex. 479.

52. *Petty v. Fleishel*, 31 Tex. 169, 98 Am. Dec. 524.

53. *Levy v. Drew*, 14 Ark 334; *Hume v. Watt*, 5 Kan. 34; *St. Louis Bank v. Henshaw*, 52 Mo. 207.

Where the party upon whom demand is to be made has a place of business, it is best to present it there, for that is the place at which he is most likely to be ready to pay.

In case the party has no place of business, demand should be made at his dwelling house.⁵⁴ If he has a place of business, but has closed it temporarily, and the notary calls to demand payment during business hours and finds no one there, he may protest the instrument without further effort to collect it.⁵⁵

It would seem, however, where a notary goes to the dwelling house first and finds it closed, that he should apply for payment at the maker's place of business, if he have one, before protesting the instrument.⁵⁶

If the party upon whom demand is to be made is in the state, the demand must be made at the place where he lives at the time when the instrument matures.⁵⁷

Where a maker or drawee has left the state after the execution of the instrument and before its maturity, demand should be made at the place in the state at which he last resided.⁵⁸

54. *Hume v. Watt*, 5 Kan. 34; *Jarvis v. Garrett*, 39 Mo. 268; *Tate v. Sullivan*, 30 Md. 464; 96 Am. Dec. 597; *Talbott v. National Bank*, 129 Mass. 67, 37 Am. Rep. 302; *Glaser v. Rounds*, 16 R. I. 235, 14 Atl. 863.

55. *Bateson v. Clarke*, 37 Mo. 31; *King v. Crowell*, 61 Me. 244, 14 Am. Rep. 560; *Anderson v. Drake*, 14 Johns. (N. Y.) 114, 7 Am. Dec. 442. If the party has two places of business in the same town, and one of them is found closed, it has been held necessary to go to the other. *Daniell on Neg. Inst.*, sec. 637.

56. *Parsons on Notes and Bills*, sec. 422, 423.

57. *Biglow v. Keller*, 6 La. Ann. 59, 54 Am. Dec. 555; *Farnesworth v. Mullin*, 164 Mass. 112, 41 N. E. 131; *Gesler v. Rounds*, 16 R. I. 235, 14 Atl. 863; *Sulzbacher v. Charleston Bank*, 86 Tenn. 201, 6 S. W. 129, 6 A. S. R. 828.

58. Though it be rumored that the maker of a note has left the state, due diligence requires that inquiry be made at his former place of residence. *Hume v. Watt*, 5 Kan. 34; *Farnesworth v. Mullin*, 164 Mass. 112, 41 N. E. 131.

In KANSAS, MISSOURI and OKLAHOMA, presentment for payment is made at the proper place; (1) where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented; (2) where no place of payment is specified and no address is given, and the instrument is presented at the usual place of business or residence of the person to make payment, or if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. G. S. Kan. sec 5326; R. S. Mo. sec. 10043; R. L. Okla. sec. 4123.

Sec. 300.—Where negotiable instruments should be presented which are made payable at a specified place.—

Where the place of payment is specified in a negotiable instrument, it is not necessary to present it to the drawee or maker in person. It should be presented at the place at which it is payable.⁵⁹

In case the acceptance of a bill, payable generally, specifies a particular place of payment, it should be presented there.⁶⁰

Presentment at the place at which the instrument is made payable is sufficient, even though the place is closed or is not occupied by the parties who occupied it at the date of the instrument's execution or acceptance.⁶¹

59. *Townsend v. Dry Goods Co.*, 85 Mo. 503; *McKee v. Boswell*, 33 Mo. 567; *Lawrence v. Dobyns*, 30 Mo. 196; *Farnsworth v. Mullin*, 164 Mass. 112, 41 N. E. 131; *Goodloe v. Godley*, 13 Sm. & M. (Miss.) 233, 51 Am. Dec. 150; *Oxnard v. Varnum*, 111 Pa. St. 193, 2 Atl. 224, 56 Am. Rep. 255; *Wiseman v. Chiappella*, 23 How. (U. S.) 368, 7 L. Ed. 513; *U. S. Bank v. Carneal*, 2 Pet. (U. S.) 543, 7 L. Ed. 513.

60. *Story on Bills of Exchange*, sec. 357; *Brown v. Jones*, 113 Ind. 46, 13 N. E. 857, 3 A. S. R. 623; *Truckman v. Hartwell*, 3 Me. 147, 14 Am. Dec. 225.

61. *Roberts v. Mason*, 1 Ala. 373; *Sanderson v. Okla.* 114 La. 373; *Pret v. Saunders*, 6 La. Ann. 364; *Central Bank v. Allen*, 16 Me. 41; *Berge v. Abbott*, 83 Pa. St. 177; *Wiseman v. Chiappella*, 23 How. (U. S.) 368, 16 L. Ed. 466.

Under the negotiable instruments law it seems that presentment should be made to some person. Sec. 80 of this law provides that presentment for payment is made at the proper place, where a place of payment is specified in the instrument and it is there presented, sec. 79 provides, that presentment for payment, to be sufficient, must be made to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

G. S. Kan. secs. 5325, 5326; R. S. Mo. secs. 10042, 10043; R. L. Okla. sec. 4123.

Sec. 301.—When place has been destroyed.—

So far as I have been able to ascertain, the courts have not yet decided what steps a notary should take where an instrument put into his hands for presentment is payable at a house which has been destroyed or torn down, and not rebuilt.⁶² If it has been rebuilt, the presentment should, it would seem, be at the new house. If it has not, the best course would probably be for the notary to make inquiries as to where the person who did business at the place has removed and if he is still in town, then to make presentment at his new place of business; and in case the party is not authorized to answer for the maker or drawee (as the case may be), then to present it at the maker's or drawee's place of business, or residence, just as though the instrument were payable generally; and in case of dishonor, to recite the steps taken in the protest. This course is advisable because in following it the holder or notary would use the utmost diligence.

62. The non-existence of the place specified for the payment has been held an excuse for not making demand in. *Roberts v. Mason*, 1 Ala. 373; *Erwin v. Adams*, 2 La. 318; *Waring v. Bets*, 90 Va. 46. When the bank or office has ceased to exist, but the house still remains, the demand should be made at the house or room designated in the instrument. *Faulkner v. Faulkner*, 73 Mo. 327; *Texarkana Nat. Bank v. Weaver*, 15 S. W. Rep. 41; *Sanderson v. Oakley*, 14 La. 373.

If the instrument is payable at either of two places, presentment at either is sufficient.

Sec. 302.—To whom presentment for payment should be made.—

A bill or note payable at no particular place is sufficiently presented when presented to, if a bill, the drawee or acceptor, if a note to the maker, at any place they may be found.⁶³ If the drawee or acceptor, or maker is not found, then presentment should be made at the place of business, or residence of such drawee or acceptor, or maker and may be made to any one in charge of the premises.⁶⁴ When the instrument is payable at a designated place presentment may in like manner be made to the drawee or acceptor, or, if a note, to the maker, or to the person in charge of such place, but it must be made at the place designated.⁶⁵

63. *Townsend v. Dry Goods Co.*, 85 Mo. 503; *King v. Crowell*, 61 Me. 244, 14 Am. Rep. 560; *Parker v. Kellogg*, 158 Mass. 90, 32 N. E. 1038. If presentation to the maker be made on the street or in a public place and he, at the time, objects to such presentation at such place, but does not refuse payment, such presentation is insufficient. *King v. Holmes*, 11 Pa. St. 456. Presentment of a check to the drawee is sufficient. *Kleekamp v. Myer*, 5 Mo. App. 444.

64. *Draper v. Clemens*, 4 Mo. 52; *Bradley v. Northern Bank*, 60 Ala. 252; *Whaley v. Houston*, 12 La. Ann. 585; *Hunt v. Maybee*, 7 N. Y. 266; *Sanford v. Norton*, 17 Vt. 285. Presentment of a note must be made in order to fix the liability of the endorser. *Burns v. Yokum*, 81 Ark. 127, 99 S. W. 956; *Nevins v. Moore*, 221 Mo. App. 330, 120 S. W. 43; *Westbay v. Stone*, 112 Mo. App. 411, 87 S. W. 34. To fix the liability of an indorser it is necessary to allege and prove a demand or a waiver of demand. *Green v. Keller*, 8 Kan. App. 110, 54 P. 833.

65. Leaving note at a bank, and notifying the maker that it is there when the bank is not named as the place of payment is not a sufficient presentment. *Bayless v. Marbut*, 124 Mo. App. 234, 101 S. W. 617. When a bank is named in the note as the place of payment leaving the note at such bank is a sufficient presentment. *Clough v. Holden*, 115 Mo. 336, 21 S. W. 1071, 37 A. S. R. 393; *Martin v. Smith*, 108 Mich. 278, 66 N. W. 61; *U. S. Bank v. Carneal*, 2 Pet

IN KANSAS, MISSOURI and OKLAHOMA, presentment must be made by the holder, or by some person authorized to receive payment on his behalf, to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where presentment is made. G. S. Kan. sec. 5325; R. S. Mo. sec. 10042; R. L. Okla. sec. 4122.

Sec. 303.—Joint makers and partners.—

If there are several joint makers or acceptors who are not partners, presentment should be made to each of them,⁶⁶ unless the bill or note be payable at a certain place, then presentment at such place is sufficient.⁶⁷ If the drawee, acceptor or maker be a firm, presentment to any member of such firm is sufficient.⁶⁸

Where a note is signed by a firm and also by a member of the firm in his individual capacity, demand at the place of business of the firm is sufficient, but must be made not only of the firm, but also of the member who signed individually. Where the firm place of business is not such member's principal place of business, it would perhaps be more prudent, if he is not found there, and no one has been

(U. S.) 543, 7 L. Ed. 513; *Fullerton v. U. S. Bank*, 1 Pet (U. S.) 604, 7 L. Ed. 280. A due bill was made payable at a certain place, held that a personal demand upon the maker at a place different from that named in the duebill was sufficient, when the place of demand was not objected to and no offer was made to pay at the place named in the duebill, *Widner v. Walsh*, 3 Colo. 548.

66. *Nave v. Richardson*, 36 Mo. 130; *Shults v. Fingar*, 100 N. Y. 539, 3 N. E. 588, 53 Am. Rep. 231; *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207. If one of the joint makers of a note dies before maturity demand of the surviving makers is sufficient. *Blake v. McMillan*, 33 Iowa, 150.

67. *Smith v. Little*, 10 N. H. 526.

68. *St. Louis National Bank v. Henschew*, 52 Mo. 207; *Hunter v. Hempstead*, 1 Mo. 67, 13 Am. Dec. 468; *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207.

authorized to answer for him, to apply at his principal or individual place of business.⁶⁹

Under the negotiable instruments law, in KANSAS, MISSOURI and OKLAHOMA, where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them even though there has been a dissolution of the firm. G. S. Kan. secs. 5330, 5331; R. S. Mo. secs. 10047, 10048; R. L. Okla. 4127, 4128.

Sec. 304.—When firm has dissolved etc.—

Where a bill is drawn on, or a note is made by a firm which dissolves or ceases to do business before the instrument's maturity, demand should not be made at the old place of business, unless occupied by some member of the firm, but should be made at the place of the business or dwelling house of either member of the old firm.⁷⁰

In KANSAS, MISSOURI and OKLAHOMA, when persons liable are partners, and no place of payment is specified, presentment, after dissolution of the firm, may be made to any one who was a member or partner at the time the firm became liable (See sec. 303.)

Sec. 305.—When drawee, or maker is dead.—

If the drawee or maker is dead, the instrument should be presented for payment to his executor or administrator. If there is no executor or administrator, demand should be made at the deceased's dwelling house.⁷¹

69. Coon v. Pruden, 25 Minn. 105.

70. St. Louis, etc. Bank v. Henschew, 52 Mo. 207; Brown v. Turner, 15 Ala. 852; Helme v. Middleton, 14 La. Ann. 484; Granite Bank v. Ayers, 19 Pick. (Mass.) 392; Barry v. Crawley, 4 Gill. (Md.) 194; Gates v. Beecher, 60 N. Y. 518, 19 Am. Rep. 207.

71. Frazier v. Dameron, 6 Mo. App. 153; Blake v. McMillan, 33 Iowa 150; Toby v. Maurina, 7 La. 493; Grower v. Moore, 25 Me.

The statutes of KANSAS, MISSOURI and OKLAHOMA provide where the person primarily liable on the instrument is dead and no place of payment is specified presentment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found. G. S. Kan. sec. 5329; R. S. Mo. sec. 10046; R. L. Okla. sec. 4126.

Sec. 306.—When maker is insolvent corporation.—

Where the party liable on the instrument is a corporation, and has been put into the hands of a receiver, demand should be made of the receiver. If the corporation is still carrying on business, it should be made at its principal office in the place.⁷²

Sec. 307.—What constitutes a sufficient presentment.—

The negotiable instruments law provides that presentment for payment, to be sufficient must be made; (1) by the holder or by some one authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or if, he is absent or inaccessible, to any person found at the place where the presentment is made.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered to the party who paid it. Under the law merchant presentment without actual exhibition of the instrument is effectual when the instrument has been lost or destroyed.⁷³

16, 43 Am. Dec. 247; *Groth v. Guyger*, 31 Pa. St. 271, 72 Am. Dec. 745; *Carolina National Bank v. Wallace*, 13 S. C. 347, 36 Am. Rep. 694; *McGruder v. Union Bank*, 3 Pet. (U. S.) 87, 7 L. Ed. 612.

72. *Hutchinson v. Crutcher*, 98 Tenn. 421, 39 S. W. 725, 37 L. R. A. 89; *Ballard v. Burton*, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664.

73. G. S. Kan. secs. 5325-5327; R. S. Mo. 10042, 10044; R. L. Okla. secs. 4122-4124. Production not necessary when instrument is lost. *Hinesdale v. Mills*, 5 Conn. 331; *Arnold v. Dresser*, 8 Allen (Mass.), 435.

Sec. 308.—When presentment may be dispensed with, etc.—

The negotiable instruments law, adopted in KANSAS, MISSOURI and OKLAHOMA, provides that presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. Presentment for payment is not required in order to charge the indorser where the instrument is made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

Delay in making presentment for payment is excused, when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate presentment must be made with reasonable diligence.

Presentment for payment is dispensed with: (1) where after the exercise of reasonable diligence, presentment, as required by this act, cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment expressed or implied.

G. S. Kan. secs. 5352-5355; R. S. Mo. secs. 10049-10052; R. L. Okla. sec. 4129, 4130.

CHAPTER XIV.

PROTEST AND NOTICE.

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310. Protest, when necessary.	325. When residence of indorser is unknown.
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323. Under negotiable instruments law.	338. Form for, act of payment supra protest.
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Sec. 309.—Protest—Definition.—

A protest is, in form, a solemn declaration, written by a notary under a fair copy of a negotiable instrument, stating that payment and acceptance, or better security for its payment, as the case may be, has been demanded and refused, the reason, if any, assigned, and that it is therefore protested. If notice is given by the notary, the protest should so state. If the protest is for a qualified acceptance,

a general refusal to accept should not be stated, otherwise the holder can not avail himself of such acceptance.¹

Sec. 310.—Protest, when necessary.—

Foreign bills are the only negotiable instruments which were required to be protested at common law. It is still necessary to protest them when dishonored, in order to hold drawers and indorsers liable thereon,² and under the state statutes inland bills, checks and promissory notes may be protested.³

The negotiable instruments law, (sections 125, 159), adopted in KANSAS, MISSOURI and OKLAHOMA, provide where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill, which has not

1. Protest as used with reference to commercial paper, in a popular sense, includes all steps necessary to charge an indorser. *White v. Keith*, 97 Ala. 666, 12 So. 611; *Wood River Bank v. Omaha First National Bank*, 36 Neb. 744, 55 N. W. 239; *Aryalt v. Pacific Bank*, 47 N. Y. 570, 7 Am. Rep. 486; *Townsend v. Loraine Bank*, 2 Ohio St. 345; *Sprague v. Fletcher*, 8 Or. 367, 34 Am. Rep. 587.

In KANSAS, protest has been defined to be a formal statement in writing by a public notary, under seal, that a certain bill of exchange or promissory note (describing it) was, on a certain day presented for payment, or acceptance, and that such payment or acceptance was refused. *Swayze v. Britton*, 17 Kan. 625.

2. Foreign bills and notes must be protested. *Commercial Bank v. Barksdale*, 36 Mo. 563; *Cullom v. Casey*, 9 Port. (Ala.) 131; 33 Am. Dec. 304; *Austin v. Rodman*, 8 N. C. 194, 9 Am. Dec. 630.

3. *Turner v. Greenwood*, 9 Ark. 44; *Thatcher v. Mills*, 14 Tex. 13, 65 Am. Dec. 95; *Knott v. Venable*, 42 Ala. 186; *Wittich v. Pensicola Bank*, 20 Fla. 843, 51 Am. Rep. 631; *Griffin v. Kemp*, 46 Ind. 172; *Wauzer v. Tupper*, 8 How. (U. S.) 234, 12 L. Ed. 1060; *Bailey v. Dozier*, 6 How. (U. S.) 23, 12 L. Ed. 328.

been previously dishonored by nonacceptance, is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

G. S. Kan. secs. 5371, 5405; R. S. Mo. secs. 10088, 10122; R. L. Okla. sec. 4202.

Sec. 311.—Certificate of protest—Requisites.—

The certificate of protest should conform to the statutes of the state in which it is made, or in absence of statutory regulation, to local usage. The following are the essential requisites that it should always contain:

(1) The time of presentment;⁴ (2) the place of presentment;⁵ (3) the fact and manner of presentment;⁶

4. The date of presentment must expressly appear, or it must be shown to be the same as the date of certificate, otherwise it can not be determined whether or not the bill or note was really dishonored. If the certificate state "this day presented," and is dated on the day of maturity (last day of grace), it is sufficient; but if the certificate be made out the next or any subsequent day after maturity, it is fatally defective unless it shows that the bill or note was presented on the day of maturity. *Prigdew v. Cox*, 13 Tex. 257; *Walensley v. Acton*, 44 Barb. (N. Y.) 312; *Burbank v. Beach*, 15 Barb. (N. Y.) 326; *Flemming v. Fulton*, 6 How. (Miss.) 473; see, also, *Nailor v. Bowie*, 3 Md. 251; *Hutington Bank v. Hysell*, 22 W. Va. 142.

5. *Boit v. Corr*, 54 Ala. 112; *Barbaroux v. Waters*, 3 Metc. (Ky.) 304; *Otsego County Bank v. Warren*, 18 Barb. (N. Y.) 290. When the bill or note is not payable at any particular place, it is not necessary to state at what place presentment and demand was made, if it appears that it was presented to the proper person; but if it be made payable at a particular place, the certificate of protest must show that it was presented and demand made at such place. *Gage v. Du-buque, etc., R. Co.*, 11 Iowa, 310; 77 Am. Dec. 145; *People's Bank v. Brooke*, 31 Md. 7, 1 Am. Rep. 11; *Magoun v. Walker*, 49 Me. 419; *Seneca County Bank v. Neass*, Den. (N. Y.) 329.

6. *Stix v. Matthews*, 75 Mo. 96; *Nave v. Richardson*, 36 Mo. 130; *Dupre v. Richards*, 11 Rob. (La.) 495, 43 Am. Dec. 214; *Page v. Gilbert*, 60 Me. 485; *Munson v. Lake*, 4 How. (U. S.) 262; 11 L. Ed. 967.

(4) the demand of payment [acceptance or security];⁷ (5) the fact of dishonor;⁸ (6) the name of the party by whom presentment was made;⁹ and (7) the name of the person to whom presentment was made.¹⁰ And in respect to notice it should state: (1) That notice had been properly given or sent to all parties to the instrument;¹¹ and (2) when not served on the party in person, it should specify distinctly whether it was delivered at his house or place of business; or, if sent by mail, that it was addressed to the postoffice nearest to him, or at which he receives his business letters.¹²

Sec. 312.—Certificate, under the negotiable instruments law.—

The statutes of KANSAS, MISSOURI and OKLAHOMA, (negotiable instruments law, sec. 160), provide that the protest (meaning the certificate of protest), must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

7. It would seem that a presentment would imply a demand for payment, but it has been held that the fact of presentment and demand should both be shown in the certificate. *Nave v. Richardson*, 36 Mo. 130; *Wetherall v. Claggett*, 28 Md. 465; *Farmers, etc., Bank v. Allen*, 18 Md. 475; *Farmers Bank v. Bowie*, 4 Md. 290; *Musson v. Lake*, 4 How. (U. S.) 262, 11 L. Ed. 967.

8. *Dupre v. Richards*, 11 Rob. (La.) 495, 43 Am. Dec. 214; *Wetherall v. Claggett*, 28 Md. 465.

9. *Warren v. Briscoe*, 12 La. 472; *Vergennes Bank v. Cameron*, 7 Barb. (N. Y.) 143.

10. *Stix v. Matthews*, 75 Mo. 96; *Nave v. Richardson*, 36 Mo. 130.

11. *Jorden v. Long*, 109 Ala. 414, 19 So. 843. A statement in the certificate, that the parties to the instrument had been "duly notified," is sufficient. *Kellogg v. Pacific Box Factory*, 57 Cal. 327. See, also, *Page v. Gilbert*, 60 Me. 485; *Bettis v. Schreiber*, 31 Minn. 329, 17 N. W. 863. *Legg v. Vind*, 165 Mass. 555, 43 N. E. 518.

12. *Allen v. Georgia National Bank*, 60 Ga. 347; *Wamsley v. Rivers*, 34 Iowa, 463; *Lewiston Falls Bank v. Leonard*, 43 Me. 144, 69 Am. Dec. 49.

- (1) The time and place of presentment;
 - (2) The fact that presentment was made and the manner thereof;
 - (3) The cause or reason for protesting the bill;
 - (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.
- G. S. Kan. sec. 5406; R. S. Mo. sec. 10123; R. L. Okla. 4203.

Sec. 313.—Duties of notary in protesting bills and notes.—

When a bill of exchange, promissory note or other instrument is delivered to a notary to be protested, he should:

- (1) Go to the maker or acceptor and present the instrument and demand payment or acceptance of same.¹³
- (2) If the instrument should be dishonored, he should note on the back of it, payment or acceptance refused.¹⁴
- (3) He should give notice to the drawer and indorsers that the instrument had been dishonored.¹⁵

13. Presentment should be made by the notary himself and not by a clerk or deputy. *Miltenberger v. Spaulding*, 33 Mo. 4; *Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275; *Chenowith v. Chamberlain*, 45 Ky. 60, 43 Am. Dec. 145; *Cribbs v. Adams*, 13 Gray (Mass.), 597; *Carmichael v. Bank of Penn*, 4 How. (Miss.) 567; 35 Am. Dec. 408; *Commercial Bank v. Varnum*, 49 N. Y. 269, *Liftly v. Mills*, 4 Tenn. 174.

The notary himself, who acts under oath and to whose acts the law gives verity, must present the bill or note for payment. *Sacridier v. Brown*, 3 McLean, (U. S.), 481.

Two notaries were partners. One of them undertook to present the bill and make the demand. The other drew up the certificate of protest and gave the notices. Held there could be no partnership in protesting a bill or note, and such presentment was insufficient. *Commercial Bank of Ky. v. Barksdale*, 36 Mo. 563.

14. *Crenshaw v. McKiernan*, Minor (Ala.), 295; *Reid v. Commonwealth Bank*, 1 T. B. Mon. (Ky.) 19; 15 Am. Dec. 86; *Cookendorfer v. Preston*, 4 How. (U. S.) 317, 11 L. Ed. 992.

15. *Liggett v. Weed*, 7 Kan. 273; *Tucker v. Gentry*, 93 Mo. App. 655, 67 S. W. 723; *Riggs v. McDonald*, 1 Ala. 641; *Ashville Nat'l Bank v. Bradley*, 117 N. C. 526, 23 S. E. 455; *Bunham v. McCormick*, 18 Utah, 42, 55 P. 77.

- (4) He should draw up his certificate of protest and,¹⁶
 (5) Record it.¹⁷

Sec. 314.—Noting.—

Noting is a minute made on the instrument by the officer, on the day of refusal of acceptance or payment. It consists of the officer's initials, the month, the day, the year, and his charges for protest. It is considered an initial step to protest. The object of it is to preserve a written memorandum of the date of refusal to accept or pay, so that the notary will not have to rely wholly upon his memory, when he writes out the protest at length.¹⁸

The statutes of KANSAS, MISSOURI and OKLAHOMA provide that when a bill has been duly noted, the protest may be subsequently extended as the date of the noting. G. S. Kan. sec. 5408; R. S. Mo. sec. 10125; R. L. Okla. sec. 4205.

It may be done in the following form:

ST. LOUIS, June 5, 1900.

Acceptance demanded and refused.

Notary's fee.....\$....
 [SEAL.] A. B., Notary Public.

16. *Townsend v. Loraine Bank*, 2 Ohio St. 345.

17. *Brandon v. Loftis*, 4 How. (U. S.) 127, 11 L. Ed. 905.

18. It was said in an English case that "noting" is unknown to common law; that it "has grown into practice in these few years." *Lifty v. Mills*, 4 Tenn. Rep. 170. The "noting" should be made on the very day of dishonor. *Thompson on Bills*, sec. 312; *Story on Bills*, sec. 27.

The noting is sufficient if made on the same day of dishonor, though it be made several hours after the dishonor of the bill. *Crenshaw v. McKiernan*, Minor (Ala.), 295; *Reid v. Commonwealth Bank*, 1 T. B. Mon. (Ky.) 91, 15 Am. Dec. 86; *Cookendorfer v. Preston*, 4 How. (U. S.) 317, 11 L. Ed. 992.

In Oklahoma protest must be noted on day of presentment or on the next business day. R. L. Okla. sec. 4205.

The object of "noting" is that the notary will not have to depend on his memory when he afterwards makes his certificate. When the certificate is made on the day of dishonor "noting" is unnecessary, but when made afterwards, without "noting" it may be inadmissible as evidence. *Thompson on Bills*, sec. 312; *Story on Bills of Exchange*, sec. 278; *Daniell on Neg. Inst.*, sec. 939.

Sec. 315.—By whom notice should be given.—

At common law, it is no part of a notary's official duty to give notice of protest to any one but the holder.¹⁹

It was the holder's duty to give notice to parties whom he desired to charge. He could give it himself, or could authorize an agent to give it for him.²⁰ Notaries frequently acted as the agents of holders in giving notice of dishonor, and there was no legal objection to their doing so; but their certificates were not admissible in evidence of the fact of notice.²¹

In most of the states laws have been passed admitting the notary's certificate of protest as evidence that notice has been given, and so it has become the duty of the notary, either by direct enactment or by custom, to give notice to all parties to the instrument.²²

The negotiable instruments law, adopted in KANSAS, MISSOURI and OKLAHOMA, provides: The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Notice may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. G. S. Kan. secs. 5343, 5345; R. S. Mo. secs. 10060, 10061; Comp. Laws Okla. secs. 4524, 4525.

19. *Martin v. Brown*, 75 Ala. 542.

20. *Payne v. Patrick*, 21 Tex. 680; *Bank of Mobile v. Huggins*, 3 Ala. 206; *Jex v. Tureand*, 19 La. Ann. 604.

21. *Tieman v. Commercial Bank*, 7 How. (Miss.) 648, 40 Am. Dec. 83; *Phipps v. Millbury Bank*, 8 Metc. (Mass.) 79.

22. *Jorden v. Long*, 109 Ala. 414; *Bettis v. Schreiber*, 31 Minn. 329, 17 N. W. 863.

Sec. 316.—To whom notice should be given.—

As has been already explained, the only parties to negotiable paper who are entitled to notice of dishonor are drawers and indorsers.²³ Notice need not be given to guarantors.²⁴

Sometimes a holder only sends notice of dishonor to the last indorser, and relies upon him to notify the next preceding indorser, and so on, each indorser having, under the law merchant, the same length of time within which to give notice, to which the holder is entitled; but there is danger of indorsers being careless in giving notice, and as the holder can only look to the indorsers and drawers to whom notice is given, the more prudent course is for him to notify, directly,

23. *Selover v. Snivley*, 24 Kan. 672; *Noyse v. White*, 9 Kan. 640; *Westbay v. Stone*, 112 Mo. App. 411, 87 S. W. 34; *Cole v. Wintercost*, 12 Tex. 118; *Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275; *Smith v. Rowland*, 18 Ala. 665; *Pattillo v. Alexander*, 96 Ga. 60, 22 S. E. 646, 29 L. R. A. 616; *Auburn etc., Bank v. Gooding*, 87 Me. 337, 32 Atl. 967; *Sweet v. Swift*, 65 Mich. 90, 31 N. W. 767; *Holmes v. Preston*, 70 Miss. 152; 12 So. 202; *Ashville Bank v. Bradley*, 117 N. C. 526, 23 S. E. 455; *Musson v. Lake*, 4 How. (U. S.) 262, 11 L. Ed. 967; *Ogden v. Saunders*, 12 Wheat. (U. S.) 213, 6 L. Ed. 606.

24. *Wolley v. Van Valkenburgh*, 16 Kan. 20, *Fuller v. Scott*, 8 Kan. 25; *Barker v. Scudder*, 56 Mo. 272; *Grayson's Admr. v. Taylor et al*, 14 Tex. 672; *Cook v. Southwick*, 9 Tex. 618; *Williams v. Granger*, 4 Day (Conn.), 444; *Gage v. Mechanics National Bank*, 79 Ill. 62; *Valts v. Harris*, 40 Ill. 155; *Clafin v. Reese*, 54 Iowa, 544; *Whitney v. Groat*, 24 Wend. (N. Y.) 82.

He, who guarantees the acts of another is bound to see that the latter fulfills the engagement, and may be held responsible for his default without notice. *Lent v. Paddleford*, 10 Miss. 230, 41 Am. Dec. 589.

If the guaranty is conditional, the guarantor is entitled to notice of dishonor. *Reeves v. How*, 16 Cal. 152; *Oxford Bank v. Haynes*, 8 Pick. (Mass.) 423; *Gillighan v. Borden*, 29 Me. 79; *Cox v. Brown*, 6 Jones (N. C.) 100; *Kennon v. Neeley*, 10 Humph. (Tenn.) 288; *Woodman v. Moody*, 4 Humph. (Tenn.) 303; *Bull v. Bliss*, 30 Vt. 127; *Sylvester v. Downer*, 18 Vt. 32.

all the parties whom he desires to charge;²⁵ and when a notary undertakes to act for him in that respect, he should take the steps requisite to charge the drawer and all indorsers.²⁶

Sec. 317.—When drawer or indorser is dead.—

When the drawer or indorser dies before maturity of the bill or note, notice should be sent to his executor or administrator if there be one.²⁷ If no executor or administrator has been appointed then notice may be directed to deceased or his heirs, at the place where his family resides, or at the place where such drawer or indorser last resided, the presumption being that there is some one there who has charge of his affairs,²⁸ but the notary must, before addressing notice to a deceased drawer or indorser or his heirs, use due diligence to ascertain whether an executor or administrator has been appointed; and, if so, notice must be addressed to him.²⁹

25. *Stix v. Matthews*, 63 Mo. 371; *Aldine Mfg. Co. v. Warner*, 96 Ga. 370; *Daniell on Neg. Inst.*, sec. 1044.

26. *Tucker v. Gentry*, 93 Mo. App. 655, 67 S. W. 723; *Northern v. Hawkins*, 61 Mo. App. 9; *French v. Columbia Bank*, 4 Cranch (U. S.) 141; 2 L. Ed. 576.

27. *Drexler v. McGlynn*, 99 Cal. 143, 33 P. 773; *New Orleans, etc., R. Co. v. Kerr*, 9 Rob. (La.) 122, 41 Am. Dec. 323; *Goodnow v. Warren*, 122 Mass. 79, 23 Am. Rep. 289; *Oriental Bank v. Blake*, 22 Pick. (Mass.) 206; *Dodson v. Taylor*, 59 N. J. L. 11, 28 Atl. 316; *Merchants Bank v. Birch*, 17 Johns. (N. Y.) 25, 8 Am. Dec. 367; *Deininger v. Miller*, 74 N. Y. St. 758; *Lindeman v. Guildin*, 34 Pa. St. 54; *Pillow v. Hardeman*, 3 Humph. (Tenn.) 538, 39 Am. Dec. 195.

Notice given to an administrator within a reasonable time after his appointment will be sufficient to bind the indorsers estate.' *White v. Stodard*, 11 Gray (Mass.), 258, 71 Am. Dec. 711.

28. *Port Jefferson Bank v. Darling*, 91 Hun (N. Y.), 236; *Stewart v. Eden*, 2 Cai. (N. Y.) 121, 2 Am. Dec. 222; *Planters Bank v. White*, 2 Humph. (Tenn.) 112, 36 Am. Dec. 305.

29. *State Bank v. Smith*, 4 Rob. (La.), 276; *State Bank v. Oliver*, 10 Cush. (Mass.) 557; *Cayaga County Bank v. Bennett*, 5 Hill (N. Y.) 236. If there is an executor or administrator, notice should be addressed to him by name and not simply by title, as administrator of

Sec. 318.—When instrument is drawn or indorsed by a firm.—

Where the instrument is drawn or indorsed by a firm, the notice should be addressed to the firm, if it is still doing business.³⁰ If it has dissolved, it may be sent to either of the partners;³¹ but if the instrument is drawn or indorsed by two or more jointly who are not partners, a separate notice must be given to each;³² and if a firm as a firm, and an individual member thereof as an individual, indorse a note jointly or otherwise, notice should be given to the individual as well as the firm.³³

Sec. 319.—To whom given under the negotiable instruments law.—

The negotiable instruments law, adopted in KANSAS, MISSOURI and OKLAHOMA provides that when a negotiable

deceased. *Goodnow v. Warren*, 122 Mass. 79, 23 Am. Rep. 289; *Manchester Bank v. Birch*, 17 Johns. 25, 8 Am. Dec. 367.

30. *Hunn v. Walt*, 5 Kan. 34; *St. Louis Fourth National Bank v. Altheimer*, 91 Mo. 190, 3 S. W. 858; *New York Contracting Co. v. Selma Savings Bank*, 51 Ala. 305, 23 Am. Rep. 552; *Citizens Saving Bank v. Hayes*, 90 Ky. 365, 29 S. W. 20; *Bank of America v. Shaw*, 142 Mass. 290, 7 N. E. 779; *Willis v. Green*, 5 Hill (N. Y.), 232. When one partner lives at a distance, and the other in the town where the note is protested, notice should be given the latter. *Hume v. Watt*, 5 Kan. 34.

31. *St. Louis Fourth National Bank v. Henschew*, 52 Mo. 207. *Coster v. Thomason*, 19 Ala. 717; *Slocum v. Lizardi*, 21 La. 355, 99 Am. Dec. 740; *Hubbard v. Matthews*, 54 N. Y. 50, 13 Am. Rep. 562.

In Tennessee it has been held that notice to a firm or to the surviving partner, while sufficient to bind the firm assets, will not bind the deceased partner's individual estate. *Coke v. State Bank*, 6 Humph. (Tenn.) 51.

32. *Shepherd v. Hawley*, 1 Conn. 367, 6 Am. Dec. 244; *State Bank v. Slaughter*, 7 Blackf. (Ind.) 140; *Peoples Bank v. Keech*, 26 Md. 521, 90 Am. Dec. 118; *Union Bank v. Willis*, 8 Met. (Mass.) 504, 41 Am. Dec. 541; *Willis v. Green*, 5 Hill. (N. Y.) 232, 40 Am. Dec. 351; *Sayre v. Frick*, 7 Watts. (Pa.), 383, 42 Am. Dec. 249.

33. *Shepherd v. Hawley*, 1 Conn. 367, 6 Am. Dec. 244; *Peoples Bank v. Keech*, 26 Md. 521, 90 Am. Dec. 118.

instrument has been dishonored by nonacceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom notice is not given is discharged. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

When the party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

G. S. Kan. secs. 5342, 5350-5354; R. S. Mo. secs. 10059, 10067-10071; R. L. Okla. secs. 4140, 4148-4951.

Sec. 320.—Notice where given.—

If a party either lives or does business in the town or city where the instrument is protested, notice should be given him by leaving a notice at his residence or place of business in such town,³⁴ and if he both lives and does busi-

34. It is proper to leave notice at indorser's place of business, when such place of business is in the town where the note is protested, although the indorser's residence is at another place. *Ireland v. Kip*, 10 Johns. (N. Y.) 490; *Smedes v. Bank of Utica*, 20 Johns. (N. Y.) 372; *Ransom v. Mack*, 2 Hill (N. Y.), 587, 38 Am. Dec. 602; *Sheldon v. Benham*, 4 Hill, 129, 40 Am. Dec. 271.

ness in the town, or if he neither resides nor does business in the town, the notice may be left at or sent to either his residence or place of business.³⁵ If the party has written his address beneath his signature, or has otherwise directed notice to be sent to a particular address, it should be sent there though it is neither his residence or dwelling.³⁶ When an indorser resides equally distant from two postoffices, the notice may be sent to either, unless the notary can ascertain at which office he gets most of his mail.³⁷ If the notary can, he should send it to the office where the maker usually receives his letters.³⁸ In absence of proof to the contrary every person is presumed to get his mail at the office nearest to him. If letters are delivered by carriers, the notary

Notice should be left at indorser's place of business and not merely in the building where he does business. *Kleinmann v. Boernstein*, 32 Mo. 311; *U. S. Bank v. Corcoran*, 2 Pet. (U. S.) 121, 7 L. Ed. 368.

Notice left at indorser's usual place of business is sufficient. *Stanley v. Mobile Bank*, 23 Ala. 652; *Cook v. Renick*, 19 Ill. 598; *Hobbs v. Strain*, 149 Mass. 213, 21 N. E. 365; *Bowling v. Harrison*, 6 How. (U. S.) 248, 12 L. Ed. 425; *Bank v. Lawrence*, 1 Pet. (U. S.) 578, 7 L. Ed. 269.

35. Notice should be sent to place where indorser would get it most promptly. *Bank of Commerce v. Chambers*, 14 Mo. App. 152; *Vanvechten v. Pruyn*, 13 N. Y. 549; *Gilroy v. Brinkly*, 12 Heisk. (Tenn.) 392.

36. *Peters v. Hobbs*, 25 Ark. 67, 91 Am. Dec. 529; *McKinzie v. Ward*, 4 La. Ann. 572; *Utica Bank v. Bendel*, 21 Wend. (N. Y.) 643, 34 Am. Dec. 281; *Morris v. Husson*, 4 Sandif. (N. Y.) 93; *Walker v. Stedson*, 14 Ohio St. 89, 84 Am. Dec. 362; *Carter v. Union Bank*, 7 Humph. (Tenn.) 548, 46 Am. Dec. 89.

37. Where there are two or more postoffices in the town where the indorser resides, the notary should use reasonable diligence to ascertain at which office he gets his mail. *Roberts v. Taft*, 120 Mass. 169. Unless he can find the indorser's particular address, or where he usually gets his mail, notice addressed to the town will be sufficient. *Saco Bank v. Sanborne*, 63 Me. 343, 18 Am. Rep. 225; *Burlingame v. Foster*, 128 Mass. 125; *Downer v. Remer*, 21 Wend. (N. Y.) 10.

38. *Nicholson v. Marders*, 3 Rob. (La.) 242.

should address the notice to the residence or place of business of the party by street and number.³⁹

In KANSAS, MISSOURI and OKLAHOMA, under the negotiable instruments law, where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address notice must be sent as follows: (1) Either to the postoffice nearest his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place and have his place of business in another, notice may be sent to either place; or (3) if he sojourn in another place, notice may be sent to the place where he is sojourning. Where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirement of this section. R. L. Okla. sec. 4152. G. S. Kan. sec. 5361; R. S. Mo. sec. 10078.

Sec. 321.—Notice, how given.—

If the drawer or indorser lives in another town from the one in which the bill or note is to be protested, the notice should be sent through the mail and should be carefully addressed.⁴⁰ If he lives in the same town the notary should deliver the notice to him, or leave it at his place of business

39. *Glascock v. State Bank*, 8 Mo. 443; *Wooly v. Lyon*, 117 Ill. 244, 57 Am. Rep. 867; *Mead v. Carnal*, 6 Rob. (La.) 73, 39 Am. Dec. 552.

40. *Seaton v. Scovill*, 18 Kan. 433, 26 Am. Rep. 779; *State Bank v. Vaughan*, 36 Mo. 90; *Corrington v. Odom*, 124 Ala. 529, 27 So. 510; *Fish v. Jackman*, 19 Me. 467, 36 Am. Dec. 769; *Shelbourn Bank v. Townsley*, 102 Mass. 177, 3 Am. Rep. 445; *Shaylor v. Mix*, 4 Allen (Mass.), 351; *Ellis v. Commercial Bank*, 7 How. (Miss.) 294, 40 Am. Dec. 63; *Hazleton Coal Co. v. Ryerson*, 20 N. J. L. 129, 40 Am. Dec. 217; *State Bank v. Ayers*, 7 N. J. L. 130, 11 Am. Dec. 535; *Bussard v. Levering*, 6 Wheat. (U. S.) 102, 5 L. Ed. 215; *Lindenberger v. Beall*, 6 Wheat. (U. S.) 104, 5 L. Ed. 216; *Dickens v. Beal*, 10 Pet. (U. S.) 572, 9 L. Ed. 538.

or residence, unless there is a carrier or delivery system; in that case the notice may be sent by mail.⁴¹

The statutes of KANSAS, MISSOURI and OKLAHOMA provide: The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice, unless the party to whom the notice is given is misled thereby.

G. S. Kan. secs. 5348, 5349; R. S. Mo. secs. 10065, 10066; R. L. Okla. 4155, 4156.

Sec. 322.—When notice should be given.—

Notice may be given or mailed on the day of demand and refusal to accept or pay, or at any time after the instrument is noted for protest;⁴² it is not *necessary* to take any

41. The manner of serving notice is not material, so the party sought to be charged gets the notice. *Rolla State Bank v. Pezholt*, 95 Mo. App. 404, 69 S. W. 51. Notice was directed to the wrong party but afterwards delivered to the proper indorser, *held* sufficient. *Carter v. Bradley*, 19 Me. 62, 36 Am. Dec. 735.

When the party to be charged lives at the place of dishonor, the notice should be personal. *Bowling v. Harrison*, 6 How. (U. S.) 248, 12 L. Ed. 425.

When the indorser or party to be charged lives out of town, but gets his mail at the postoffice in the town where the instrument is payable, notice by mail is sufficient. *State Bank v. Vaughan*, 36 Mo. 90; *Sanderson v. Runstadler*, 31 Mo. 483; *Barrett v. Evans*, 28 Mo. 331; *Carson v. State Bank*, 4 Ala. 148; *Walker v. Augusta Bank*, 3 Ga. 486.

42. *Draper v. Clemens*, 40 Mo. 52; *Curry v. Mobile Bank*, 8 Port. (Ala.) 360; *McFarland v. Pico*, 8 Cal. 626; *Lockwood v. Crawford*, 18 Conn. 361; *Guignon v. Union Trust Co.*, 156 Ill. 135, 40 N. E. 556, 47 A. S. R. 186; *Blockman v. Leonard*, 15 La. 59; *Osborn v. Moncure*, 3 Wend. (N. Y.) 170; *Simpson v. Turney*, 5 Humph. (Tenn.) 419, 42

steps in reference to giving notice before the next day, but in order to bind the indorser or party sought to be charged, unless there be some legal excuse, notice must be given or mailed before the close of the day following the date of dishonor.⁴³

If the party to be notified lives in the place where the instrument is protested, the notice may be served any time during the succeeding day, before the hour for retiring, if served personally or by leaving it at his dwelling house.⁴⁴ If it is served by leaving it at his place of business, it should be left there before the close of business hours.⁴⁵ If sent by penny post, it should be mailed in time to be delivered as soon as is required to be given when the notary himself serves it.⁴⁶

When the notice is to be sent to a drawer or indorser living in another place, it should be sent, at least, by the first mail which closes on the day succeeding that on which payment or acceptance is refused. If no such mail leaves the next day, it should be sent by the first mail leaving thereafter.⁴⁷

Am. Dec. 443; *Lindenberger v. Beall*, 6 Wheat. (U. S.) 104, 5 L. Ed. 216. The rule is the same in England. *Rowe v. Tipper*, 13 C. B. 249.

43. *Seaton v. Scoville*, 18 Kan. 433, 26 Am. Rep. 779. *Knott v. Venable*, 42 Ala. 186; *Lockwood v. Crawford*, 18 Conn. 361; *Hartford Bank v. Stedman*, 3 Conn. 489; *Marks v. Boone*, 24 Fla. 177, 4 So. 532; *Chick v. Pillsberry*, 24 Me. 458, 41 Am. Dec. 394; *Whitehall v. Johnson*, 17 Mass. 449, 9 Am. Dec. 145; *Phelps v. Stocking*, 21 Neb. 443, 32 N. W. 217; *Smith v. Poillon*, 87 N. Y. 590, 41 Am. Rep. 402; *Simpson v. Turney*, 5 Humph. (Tenn.) 419, 42 Am. Dec. 443.

44. *Adams v. Wright*, 14 Wis. 442; *Bonner v. City of New Orleans*, 2 Woods (U. S.), 135. Ten o'clock P. M. is sufficient if the notice is actually delivered to the indorser or to a member of his family, at his residence. *Hollowell v. Curry*, 41 Pa. St. 322.

45. *Stephenson v. Primrose*, 8 Port. (Ala.) 155, 33 Am. Dec. 281, *Adams v. Wright*, 14 Wis. 442.

46. *Walters v. Brown*, 15 Md. 285, 74 Am. Dec. 566; *Shoemaker v. Mechanics Bank*, 59 Pa. St. 79, 98 Am. Dec. 315.

47. Some courts hold, that when notice is sent by mail it must be sent by the first mail on the day following dishonor. *Moore v. Burr*,

Sec. 323.—Under negotiable instruments law.—

The negotiable instruments law, adopted in KANSAS, MISSOURI and OKLAHOMA, provides; Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail it must be deposited in the post office in time to reach him in usual course on the day following.

14 Ark. 230; *Seaton v. Scoville*, 18 Kan. 433, 26 Am. Rep. 779; *Bank v. Merle*, 2 Rob. (La.) 117, 38 Am. Dec. 201; *Goodman v. Norton*, 17 Me. 381; *Beckwith v. Smith*, 22 Me. 125, 38 Am. Dec. 290; *Haskill v. Bordman*, 8 Allen (Mass.), 38; *Mitchell v. Cross*, 2 R. I. 437. A delay by the holder of one mail occasioned by seeking legal advice, when the notice is actually mailed on the next day after dishonor, will not discharge the indorser. *Davis v. Hanley*, 12 Ark. 645; *Curry v. Bank of Mobile*, 8 Port. (Ala.) 360; *Smith v. Poillon*, 87 N. Y. 590, 41 Am. Dec. 402; *West v. Brown*, 6 Ohio St. 542.

When parties live at different places, notice should be posted in time to be sent by the mail the next day after dishonor, and if there is no mail the next day, then by the next mail. *Knott v. Venable*, 42 Ala. 186; *Townsley v. Stringer*, 1 La. 122; *Goodman v. Norton*, 17 Me. 381; *Eagle Bank v. Chapin*, 3 Pick. (Mass.) 180; *Talbot v. Clark*, 8 Pick. (Mass.) 51; *Bank v. Blanchard*, 23 Pick. (Mass.) 304; *Mead v. Engs*, 5 Cow. (N. Y.) 303; *Lenox v. Roberts*, 2 Wheat. (U. S.) 373, 4 L. Ed. 264; *Alexandra Bank v. Swan*, 9 Pet. (U. S.) 33, 9 L. Ed. 40.

Mailing notice at any time the next day after dishonor is sufficient. *Seaton v. Scoville*, 18 Kan. 433.

The next day, as used with reference to notice, means the next business day; if a bill or note be dishonored on Saturday or the day before, a legal holiday notifying the indorser on Monday, or on the day following, such legal holiday is sufficient. *Moore v. Burr*, 13 Ark. 230; *Commercial Bank v. Barksdale*, 36 Mo. 563; *Brennen v. Vought*, 97 Ala. 647, 11 So. 863; *Debliux v. Bullard*, 1 Rob. (La.) 66, 36 Am. Dec. 684; *Sylvester v. Crohan*, 138 N. Y. 494, 34 N. E. 273.

Where the person giving, and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail it must be deposited in the post office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time prescribed in the next preceding paragraph of this section.

G. S. Kan. secs. 5356, 5357; R. S. Mo. secs. 1073, 1704; R. L. Okla. secs. 4153, 4154.

Sec. 324.—When notice shall be given.—

In all cases where bills of exchange, drafts or promissory notes shall become due and payable on Sunday, Christmas, New Year's Day, Washington's Birthday, Fourth of July, Thanksgiving Day and all other days declared by the laws of Arkansas to be public holidays, the same shall be payable on the day next preceding such Sunday, Christmas, New Year's Day, Washington's Birthday, Fourth of July, Thanksgiving Day or other holidays, and in case of nonpayment, may be noted and protested on the next preceding day, provided that, it shall not be necessary for the holder or holders of bills of exchange, drafts and promissory notes to give notice of the dishonor thereof until the next day after Sunday, Christmas, New Year's Day, Washington's Birthday, Fourth of July, Thanksgiving Day or other holidays, and every such notice so given shall be valid and effectual to all intents and purposes. Kirby's Dig. Ark. sec. 501.

Other holidays named in recent acts of the legislature of Arkansas, are: general biennial election days; the first Saturday in March, the nineteenth day of January; the third day of June; and the twelfth day

of October. The act declaring the twelfth day of October a legal holiday provides that it shall not affect commercial paper. Castle's Supplement, Ark. secs. 501a-501e.

The term "bill of exchange" as used in this act, shall be so construed as to include all drafts or orders drawn by one person on another for the payment of a sum of money specified therein. Kirby's Dig. Ark. secs. 505-507.

Sec. 325.—When residence of indorser is unknown.—

When the residence of the indorser, or other party entitled to notice, is unknown the notary must use ordinary diligence to discover his whereabouts.⁴⁸ There is no definite rule as to what constitutes ordinary diligence in this respect, the general rule laid down by most of the courts is, that the notary must use such diligence as an ordinarily prudent man would use, when interested himself in giving notice to a person whose address is unknown.⁴⁹ It has been held that examining a city directory is not sufficient diligence,⁵⁰ that inquiry should be made of

48. *Wolf v. Burns*, 59 Mo. 583; *Earnest v. Taylor*, 25 Tex. Supp. 37; *McClannahan v. Brandon*, 1 Mort. (La.) 321, 14 Am. Dec. 188; *Utica Bank v. De Mott*, 13 Johns. (N. Y.) 432.

49. It is not due diligence to leave notice at a hotel where the indorser usually stays, it not appearing that such notice was left with any one authorized to receive it, and no inquiry for the indorser having been made. *Ashley v. Gunton*, 15 Ark. 415. The courts are uniform in their holdings, that due diligence to ascertain the address of parties entitled to notice must be used, but it is hard to lay down any universal rule as to what constitutes due diligence. It ought, however, to be such effort as a prudent man would put forth, when interested in giving notice, to find the address of the party to be notified. *Wolf v. Burgess*, 59 Mo. 583; *U. S. Bank v. Canaal*, 2 Pet. (U.S.) 543, 7 L. Ed. 513.

50. Examining a city directory, without further inquiry is insufficient. *Gilchrist v. Donnell*, 53 Mo. 591; *Bacon v. Hanna*, 137 N. Y. 379, 33 N. E. 303, 20 L. R. A. 495; *Cumming v. Roderick*, 167 N. Y. 571, 60 N. E. 1109. Examination of the city directory and in-

parties most likely to know the whereabouts of the indorser, such as next door neighbors, kinsfolk,⁵¹ employers, agents and business associates. If the notary can not obtain the address of the indorser, and the holder lives in another town, he should prepare notice, or notices, and mail them to the holder, and, if there be more than one indorser, and the holder only knows the address of the last indorser he should send the notices to him, requesting him to address and mail them to the other indorsers.⁵² If the address of the drawer of a bill can not be ascertained notice should be directed to the place where the bill bears date.⁵³

The statutes of KANSAS, MISSOURI and OKLAHOMA provide; Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given or does not reach the parties sought to be charged. G. S. Kan. sec. 5365; R. S. Mo. sec. 10082; R. L. Okla. sec. 4162.

quiry of both the holder and maker of the note is sufficient diligence. *Sanderson v. Reinstadler*, 31 Mo. 483.

The notary must act in good faith and not on doubtful information, when better and more certain information can be obtained. *Palmer v. Whitney*, 21 Ind. 58; *In re Billings*, (Minn.), 85 N. W. 162; *Utica Bank v. Bender*, 21 Wend. (N. Y.) 643, 34 Am. Dec. 281.

51. Upon inquiry at indorser's next door neighbor, the notary ascertained that the indorser was temporarily absent from home for an indefinite time and left notice with such neighbor, requesting him to deliver it to the indorser upon his return. *Held*, diligence was sufficient. *Williams v. U. S. Bank*, 2 Pet. (U. S.) 96, 7 L. Ed. 360. Indorser lived twenty miles from place where note was protested; the notary handed notice to the indorser's wife the next day after protest and she, on the next day, gave such notice to her husband. *Held*, sufficient. *Foreman v. Wikoff*, 16 La. 20, 35 Am. Dec. 212. It is sufficient to inquire of indorser's partner, clerk, or factor, or of a relative who would likely know indorser's residence, and would know if he had moved. *Garver v. Downie*, 33 Cal. 176; *Ledoux v. Morgan*, 3 La. Ann. 344; *Requa v. Collins*, 51 N. Y. 144.

52. *Bank of Missouri v. Vaughan et al*, 36 Mo. 90.

53. *Dickens v. Beal*, 10 Pet. (U. S.) 572, 9 L. Ed. 538.

Sec. 326.—Requisites of notice.—

The object of notice is to give information to the party to whom it is addressed, of the fact that the instrument referred to therein has been presented for acceptance or payment, and dishonored, and that the holder considers him liable and looks to him for payment.⁵⁴ Any form of words that gives this information is sufficient.⁵⁵ It may be given orally⁵⁶ but the better practice is to give notice in writing.⁵⁷

Sec. 327.—Certificate of notary as evidence—In Arkansas.—

The statutes of ARKANSAS provide that the protest made by a notary public under his hand and seal of office shall be evidence of the facts therein contained; and the certificate of a notary public, under his hand and seal of office, that he forwarded notice of protest shall be *prima facie* evidence of that fact.⁵⁸ Kirby's Dig, Ark. secs. 3062, 363.

Sec. 328.—Certificate as evidence. —In Missouri.—

"A notarial protest is evidence of a demand and refusal to pay a bill of exchange or negotiable promissory note, at the time and in the manner stated in such protest."⁵⁹ R. S. Mo. sec. 10176.

54. Renick v. Robbins, 28 Mo. 339, Stoughton v. Swan, 4 Cal. 213, 60 Am. Dec. 605.

55. McFarland v. Pico, 8 Cal. 626; Gates v. Beecher, 60 N. Y. 518, 19 Am. Rep. 207.

56. Burlington First National Bank v. Hatch, 78 Mo. 13; Glasgow v. Pratt, 8 Mo. 336, 40 Am. Dec. 142.

57. Martin v. Brown, 75 Ala. 442.

58. The certificate of a notary, either in or out of this state, that he has mailed notice to the indorser is *prima facie* evidence of that fact. Peters v. Hobbs, 25 Ark. 67; Fletcher v. Arkansas National Bank, 62 Ark. 265, 35 S. W. 228.

59. The certificate of the notary is evidence of demand. Commercial Bank v. Barksdale, 36 Mo. 563; Faulkner v. Faulkner, 73 Mo. 327; Clough v. Holden, 115 Mo. 336, 21 S. W. 1071; Nelson v. Castle, 105 Mo. App. 187.

Sec. 329.—Sworn certificate as evidence.—

"The certificate of a notary public, protesting a bill of exchange or negotiable promissory note * * * setting forth the demand of payment, refusal, protest therefor, and notice of dishonor to the parties thereto, and the manner of each of said acts, and verified by his affidavit, shall, in all courts in this state, be *prima facie* evidence of such acts, provided such certificate be filed in the cause for at least fifteen days before the trial thereof."⁶⁰

FOR FORM OF AFFIDAVIT SEE SEC. 339. R. S. Mo. sec. 6329.

Sec. 330.—Certificate as evidence—in Texas.—

"It shall be the duty of any notary public who shall protest any bill of exchange or promissory note, for acceptance or non-payment, to set forth in his protest and in his notarial record a full and true statement of what shall have been done by him in relation thereto, according to the facts, by specifying therein whether demand was made for the sum of money in such bill or note specified, of whom, and when and where such demand was made. It shall also be his duty to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable; and when any such notice shall be served by him, he shall note in his protest and notarial record, on whom and when such notice was served; and when such notice shall be deposited in the post office by him, he shall specify when and where mailed, and to whom and where directed; and such protest or a copy of such notarial record certified under the hand and seal of

60. This section adds nothing to the duties of the notary. It extends the use of his certificate as evidence. His certificate is evidence of demand and refusal to pay the bill; his sworn certificate is evidence of demand, refusal to pay and that protest and that notice of dishonor has been given. State ex. rel. Edwards, 66 Mo. App. 47; Rolla State Bank v. Pezoldt, 95 Mo. App. 404, 69 S. W. 57; Faulkner v. Faulkner, 73 Mo. 327; First National Bank v. Hatch, 78 Mo. 13.

such notary public shall be admitted in all the courts of this state as evidence of the facts therein set forth.⁶¹ R. S. Tex. art. 591. For forms for certificate and notice, see secs. 335-340.

Sec. 331.—Protest for better security.—

The negotiable instruments law, now in force in KANSAS, MISSOURI and OKLAHOMA provides; Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

G. S. Kan. sec. 5411; R. S. Mo. sec. 10128; R. L. Okla. sec. 4208.

Sec. 332.—Acceptance of a bill for honor.—

The negotiable instruments law, now in force in KANSAS, MISSOURI and OKLAHOMA provides; Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn.

An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

61. Note should be protested on last day of grace. A protest prior to that time, unless grace is waived, is premature. Cary Lumber Co. v. Bank, 86 Tex. 300, 24 S. W. 260.

Presentment for payment to acceptor for honor must be made:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity;

(2) If it is to be presented in some other place than the place where it is protested, if sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail if deposited in the postoffice as specified above.

G. S. Kan. secs. 5414, 5415, 5420, 5421; R. S. Mo. secs. 10131, 10132, 10137, 10138; R. L. Okla. secs. 4211-4218.

Sec. 333.—Payment for honor.—

The negotiable instruments law, also provides: Where a bill has been protested for nonpayment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

The payment for honor *supra* protest in order to operate as such and not merely as a voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties is to be given preference.

Where a bill has been paid for honor, all parties, subsequent to the party for whose honor it has been paid, are discharged, but the payor for honor is subrogated for and succeeds to, both the rights and duties of the holder as

regards the party for whose honor he pays and all parties liable to the latter.

Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

G. S. Kan. chap. 84, art. 15; R. S. Mo. secs. 10141-10147; R. L. Okla. sec. 4225.

Sec. 334.—Liability of notary for failure to properly perform his duty.—

The power of notaries public to protest negotiable instruments is incident to the office, and has been recognized by the law merchant as far back as the history of the office extends.⁶² And he is required to use diligence, care and skill in the performance of such duty, and he is liable in damages on his official bond for any failure or neglect upon his part by which any loss occurs to the holder or other party to the instrument placed in his hands.⁶³

62. *Nichols v. Webb*, 8 Wheat. (U. S.) 326, 5 L. Ed. 628.

63. By accepting the office and entering upon the discharge of its duties, a notary public contracts with those who employ him that he will perform such duty with integrity, diligence and skill, and a person employing a notary is not required to determine upon the validity or legality of his acts. *Fogarty v. Finlay*, 10 Cal. 239; 70 Am. Dec. 714.

A notary public is an officer appointed by public authority, and persons employing him, in the absence of notice to the contrary, have a right to assume that he is a fit and proper agent for the discharge of the duties of that office. *Stacy v. Dane Co. Bank*, 12 Miss. 629; *Britton v. Niccols*, 14 Otto (U. S.) 757.

In accepting the office, a notary contracts the obligation to fill it intelligently and honestly. *Stork v. American Surety Co.*, 109 La. 713, 33 So. 742.

A bank receiving commercial paper for collection properly discharges its duty, in case of nonpayment, by placing the paper in the hands of a notary public to be proceeded with in such manner as to charge the parties to it. The bank is not liable for the failure of the

In the absence of a statute authorizing him to act through a deputy or clerk, he must present the instrument for acceptance or payment in person.⁶⁴ Under the law merchant, giving notice of dishonor is not a part of the notary's duty for the neglect of which he is liable on his bond;⁶⁵ but in most of the states laws have been enacted

notary to discharge his duty. In such case the notary is the subagent of the holder and responsible directly to him. *Tiernan v. Commercial Bank*, 7 How. (Miss.) 648; 40 Am. Dec. 83; *Agricultural Bank v. Commercial Bank*, 7 Smed. & M. (Miss.) 592. See, also, *Britton v. Niccols*, 14 Otto (U. S.), 757, 26 L. Ed. 917.

But when a bank receives negotiable paper for collection, it contracts that the proper steps shall be taken to charge the drawer and indorsers, and does become liable for the negligence of a notary in its employ. *Gerhardt v. Boatman's Saving Institution*, 38 Mo. 60; *Davy v. Jones*, 42 N. J. L. 28; *Montgomery County Bank v. Albany City Bank*, 7 N. Y. 459; *Walker v. Bank of New York*, 9 N. Y. 582; *Commercial Bank v. Union Bank*, 11 N. Y. 203; *Ayrault v. Pacific Bank*, 47 N. Y. 570; 6 Rob. (N. Y.) 337; 7 Am. Rep. 489.

The holder of a bill is authorized to give full credence to a notary's certificate of demand and notice, and he may look to the notary to repair any injury resulting from its falsity. *Bank of Mobile v. Marston*, 7 Ala. 108; *Fogarty v. Finlay*, 10 Cal. 239; 7 Am. Dec. 714; *Bowling v. Arthur*, 34 Miss. 41; *Belmire v. Bank of U. S.*, 1 Miles (Pa.), 173.

The failure of a notary public to give notice of protest of a promissory note is a breach of his official bond (*Tevis v. Randall*, 6 Cal. 632; 65 Am. Dec. 547), and a notary who employs another to make presentment of a foreign bill, instead of presenting it personally, and then protests and gives notice of non-payment in his own name, thereby failing to charge the indorsers, is liable on his official bond to the party injured. *Commercial Bank v. Varnum*, 3 Laws (N. Y.), 86.

64. *Commercial Bank v. Barksdale*, 36 Mo. 563; *Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275; *Onego County Bank v. Bates*, 3 Hill (N. Y.), 53; *Scridner v. Brown*, 3 McLean (U. S.), 481.

65. It is no part of the official duty of a notary to give notice of the dishonor of a bill or note. *Vandewater v. Williamson*, 13 Philia. (Pa.) 140. A notary public cannot, as a public officer, give notice of nonpayment of a note. When he does so he acts as agent of the holder and not as a public officer. *Lindsborg Bank v. Oler*, 31 Kan. 599, 3 P. 324; *Couch v. Sherrell*, 17 Kan. 622; *Swaize v. Britton*, 17 Kan. 625.

authorizing notaries to protest negotiable instruments, and making their certificates of protest *prima facie* evidence that notice of dishonor has been given. Under such statutes, the giving of notice of dishonor is a part of his official duty and he is liable to the holder on his official bond for any damage that may be occasioned by his failure to give, or negligence or unskillfulness in giving, notice of dishonor to indorsers or parties sought to be charged.⁶⁶

Forms.—The following are correct forms for notice and protest in Arkansas, Kansas, Missouri, Oklahoma and Texas, and are practically sufficient for all the states and territories.

Sec. 335.—Forms of notice.—

NOTICE TO INDORSER OF A NOTE OF PROTEST FOR NON-PAYMENT.

ST. LOUIS, MO., —, 19—.

A. B., Kansas City, Mo.:

Sir: A note dated —, 19—, drawn by C. D. in favor of E. N., for the sum of — dollars, indorsed by you and [here name indorsers], and payable — after date, has, at the request of G. H., the holder thereof, been by me this day presented to C. D., the maker, and payment demanded, and, payment being refused, I have protested the same for nonpayment, and, at the request of said G. H., I hereby notify you that he looks to you for payment, interest, damages and costs.

Your obedient servant,

X. Y., Notary Public.

In ARKANSAS, KANSAS and MISSOURI, the notary should always add to his certificate the time of the expiration of his commission.

NOTICE TO INDORSER OF PROTEST FOR BETTER SECURITY.

ST. LOUIS, MO., —, 19—.

A. B., Kansas City, Mo.:

Sir: A bill of exchange dated —, 19—, drawn by C. D. in favor of E. N., on G. H., for the sum of — dollars, indorsed by you and

66. Under statutes authorizing notaries to protest negotiable instruments and give notice of such protest, it is a part of the notary's official duty to give notice, for the neglect of which he is liable on his official bond. *Tevis v. Randall*, 6 Cal. 632, 65 Am. Dec. 547; *Bowling v. Arthur*, 34 Miss. 41; *Williams v. Parks*, 63 Neb. 747, 89 N. W. 395.

[here name other indorsers, if any], and payable — after date at —, has, at the request of J. K., the holder thereof, been this day presented by me at the counting house of G. H., the drawee, whose acceptance appears thereon, to a clerk in charge there [or as the case may be], and better security demanded for the payment thereof when the same shall become due, in consequence of said G. H. having become bankrupt [or insolvent, or suspended payment, or have absconded, as the case may be], and better security being refused, I have protested said bill for want of better security for its payment, and, at the request of said J. K., I hereby notify you that he looks to you for payment, exchange, re-exchange, damages, interest and costs.

X. Y., Notary Public.

NOTICE TO DRAWER OF PROTEST FOR BETTER SECURITY.

ST LOUIS, MO., —, 19—.

A. B., Kansas City, Mo.:

SIR: A bill of exchange dated —, 19—, drawn by you in favor of E. F., for the sum of — dollars, on I. H., payable — after date at —, has, at the request of J. K., etc. [conclude as in the preceding form].

NOTICE OF PROTEST TO THE DRAWER OF A BILL.

ST LOUIS, MO., —, 19—.

A. B., Kansas City, Mo.:

SIR: A bill of exchange dated —, 19—, drawn by you in favor of C. D., for the sum of — dollars, on E. F., payable — after date at —, has, at the request of G. H., the holder thereof, been by me this day presented for acceptance [or payment] to E. F., the drawee, at —, and acceptance [or payment] being refused, I have protested said bill for non-acceptance [or non-payment], and, at the request of said G. H., hereby notify you that he looks to you for payment, and for all exchange, re-exchange, damages, interest and costs.

Your obedient servant,

X. Y., Notary Public.

NOTICE OF PROTEST TO AN INDORSER OF A BILL.

ST LOUIS, MO., —, 19—.

A. B., Kansas City, Mo.:

SIR: A bill of exchange dated —, 19—, drawn by C. D. in favor of E. F., on G. H., for the sum of — dollars, indorsed by you and [here insert other indorsers' names], and payable — after date, etc., [conclude as in preceding form].

Sec. 336.—Forms of protest.—**PROTEST OF A PROMISSORY NOTE FOR NON-PAYMENT.**

[Here insert copy of note, with name of indorser.]

UNITED STATES OF AMERICA.

STATE OF —, }
County of —. } ss.

Be it known, that on the day of the date hereof, at the request of John Doe, the holder of the original promissory note of which the above is a true copy with all that is written thereon, I, Robert Roe, notary public for the county of — in the state of —, residing in the city of —, in said state, during the usual hours of business for such purposes, presented the same at the place of business [or residence, *or* other place, naming it] of James Jackson, the maker, to the said James Jackson [or to A. B., a clerk in charge of said place of business, or as the case may be], and demanded payment thereof, to which he answered [here insert reply, or the substance thereof], or words to that effect.

Whereupon I, the said notary, at the request aforesaid, and because of the refusal of the said James Jackson, the maker aforesaid, to pay said note [or because of the inability of said maker to pay the same, or other reason, stating fully the reason], have protested and do hereby solemnly protest against the maker of said note, the indorser, and all others concerned therein, for exchange and re-exchange, and all costs, charges, damages and interest, accrued or to accrue, by reason or in consequence of the non-payment of said note; of all which I notified John Brown, the endorser thereof, on the day of the date hereof, by depositing a notice thereof in the post office in the city of —, in said state, addressed to said Brown, at the town of — in said state [or at —, the post office nearest to his place of residence and at which he usually receives his mail.]

This done and protested at the city of —, in the county of — and state of —, this — day of —, A. D. 19—.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

[SEAL.]

ROBERT ROE, Notary Public.

Recorded, book —, folio —.

Fee, \$—.

The reader will remember that all notarial certificates are required by the Arkansas, Kansas and Missouri statutes to state when the notary's term expires. The statement should be inserted after his title in the body of the certi-

ificate, thus: "qualified for a term ending —, 19—," or after the signature.

The form of protest of a bond is substantially the same as that of a note.

PROTEST OF A BILL OF EXCHANGE FOR NON-PAYMENT

[Here insert copy of bill, with name of indorser.]

UNITED STATES OF AMERICA.

STATE OF —, }
County of —. } ss.

Be it known, that on the day of the date hereof, at the request of John Doe, the holder of the original bill of exchange of which a true copy is above written, I, Robert Roe, notary public for the state and county aforesaid, residing in the city of —, during the usual hours of business for such purposes, presented the same at the place of business [or residence, or if elsewhere, state where] of James Jackson, the acceptor thereof [or *drawee* thereof, if it has not been accepted], to the said James Jackson, and demanded payment thereof, which was refused, the said James Jackson replying [here state reply], or words to that effect.

Whereupon I, the said notary, etc. [as in the preceding form].

PROTEST OF A BILL OF EXCHANGE FOR NON-ACCEPTANCE.

[Here insert copy of bill, with name of indorser.]

UNITED STATES OF AMERICA.

STATE OF —, }
County of —. } ss.

Be it known, that on the day of the date hereof, at the request of John Doe, the holder of the original bill of exchange of which a true copy [in Oklahoma add: and all that is written thereon], is above written, I, Robert Roe, notary public for the state and county aforesaid, residing in the city of —, during the usual hours of business for such purposes, presented the same at the place of business [or residence, or other place, as the case may be] of James Jackson, the drawee thereof, to the said James Jackson [or to A. B., a clerk in charge of said place of business, as the case may be], and requested acceptance thereof, which was refused, the said James Jackson replying that he had no funds of the drawer of said bill [or as the case may be], or words to that effect.

Whereupon I, the said notary, at the request aforesaid, and because of the refusal of the said James Jackson to accept said bill, have protested, and do hereby solemnly protest, against the drawer of said bill, the indorser and all others concerned therein, for exchange and all costs, charges, damages and interest accrued or to accrue by reason, or in consequence, of the non-payment of said note; all of which I notified

John Brown, the indorser thereof, by depositing, on the day of the date hereof, a notice thereof in the postoffice in the city of —, of said county, directed to the said indorser at the town of —, in said state [or at —, the postoffice nearest to his place of residence, and in which he usually receives his mail]; and also notified Thomas Smith, the drawer thereof, by delivering notice thereof, on the day of the date hereof, to him at his usual place of business in the city of —.

Thus done and protested, at the city of —, in the county of —, and state of —, this — day of —, A. D. 19—.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

ROBERT ROE, Notary Public.

Recorded, book —, folio —.

Fee, \$—.

PROTEST FOR BETTER SECURITY.

[Caption as in preceding forms.]

Be it known, that on the day of the date hereof, at the request of John Doe, the holder of the original bill of exchange, of which a true copy is above written, I, Robert Roe, notary public within and for the county and state aforesaid, and residing in the city of —, did exhibit said bill at the counting house of E. F., the person upon whom the said bill is drawn, and whose acceptance appears thereon, and did present the same to X. Y., a clerk in charge there, and demanded security for the payment thereof when the same shall become due, in consequence of said — — having become bankrupt [or insolvent or suspended payment], and I received for answer that security for the same could not be given by the said E. F., who has been declared bankrupt [or suspended payment, as the case may be]. Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do hereby solemnly protest, against the drawer of said bill, the acceptor and indorsers, and all other parties thereto, and all others concerned for all exchange, re-exchange, damages, interest and costs accrued and to accrue for want of better security for the payment of said bill when due, of all of which I notified John Brown, the indorser thereof, etc. [Conclude as in preceding forms.]

Sec. 337.—Affidavit to certificate of protest under Missouri statute.—

STATE OF MISSOURI, }
County of —. } ss.

Before me, A. B., a notary public in and for said county and state on this day personally appeared —, who, being by me duly sworn,

upon oath says, that the statements set forth in the foregoing certificate are true.

Sworn to and subscribed before me this — day of —, A. D. 19—.

[SEAL.]

A. B., Notary Public.

Term of office expires, etc.

Sec. 338.—Notarial act of honor for payment *supra* protest.—

UNITED STATES OF AMERICA.

STATE OF —, }
County of —. } ss.

Be it known that, before me, —, a notary public in and for the county of —, state of —, at my office in the city of —, — county, said state, on this — day of —, A. D., 19—, personally appeared A. B., who solemnly declared to me his intention, [or personally appeared before me C. D., agent of A. B., who solemnly declared it to be A. B.'s intention] to pay the bill of exchange which [or a copy of which] together with its certificate of protest, is hereto attached, *supra* protest, for the honor of E. F., against whose account said bill was drawn [or for the honor of G. H., an indorser on said bill].

Given under my hand and seal of office on the day and year in this certificate above written.

—, Notary Public.

Sec. 339.—Steamboat and marine protests.—

A master, on his arrival in port, in case of disaster, is bound to give a verified statement in writing of the circumstances attending the voyage and the loss. This statement is called a protest, and may be verified before a notary.

Bouvier defines a protest as “a writing attested, etc., drawn by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing it was not owing to the neglect or misconduct of the master.”

The UNITED STATES statutes provide that “if any vessel from any foreign port, compelled by distress of weather or other necessity, shall put into any port of the United States, not being destined for the same, the master, together with mate or person next in command, may within twenty-four hours after her arrival, make protest in the usual form, upon oath, before a notary public * * * setting forth

the cause or circumstances of such distress or necessity." The notary should note the protest in his official records in the form hereinafter given, within the time prescribed. A more extended statement may subsequently be made either before him or another notary. U. S. R. S. sec. 2891; 2 Bouvier's Law Dict. 481; 3 Kent, Com. sec. 214, Note a.

Sec. 340.—Forms of protest.—

NOTATION OF PROTEST.

STATE OF —, }
County of —, } ss.

By this public instrument be it known unto all whom it may concern, that on this — day of —, 19—, before me, A. B., a notary public in and for said county, dwelling in the city of —, duly commissioned [in Missouri insert, "for a term expiring —, A. D. 19—"] and sworn, personally came C. D., master, and E. F., first mate, of the ship [or steamboat] called the G. H., of —, of the burden of — tons, or thereabouts, now lying in the port of —, who, being by me duly sworn, severally declared on oath that they sailed in and with the said vessel on the — day of — last, from the port of —, with a cargo of —, bound to the port of —, having in due prosecution of said voyage [here state the facts briefly concerning any accident that may have occurred or the cause of putting it into port]; and the said C. D. and E. F.

We, A. B. and C. D., do solemly swear that the foregoing statement is correct and contains a true account of the facts and circumstances therein stated.

A. B.

C. D.

Thus declared and protested in due form of law at — aforesaid, the day and year first above written.

[SEAL.]

G. H., Notary Public.

PROTEST EXTENDED BEFORE ANOTHER NOTARY.

[Caption as in above form.]

By this public instrument of protest be it known to all whom it may concern, that on the — day of —, in the year of our Lord one thousand nine hundred and —, before me, M. N., a notary public of —, personally appeared C. D., master, and E. F., first mate of the ship [or steamboat] G. H., of —, of the burden of about — tons, and noted with him in due time, and in due form of law, his protest for the uses and purposes hereinafter mentioned.

And now, on this —— day of ——, in the year ——, before me, I. J., a notary public in and for said county of ——, duly commissioned [in Missouri insert, "for a term expiring ——, A. D. 19—"] and sworn and dwelling in the city of ——, and state aforesaid, comes the said C. D. and E. F., and require me to extend their said protest; and together with them came and appeared [insert names], of said vessel, all of whom, being by me duly sworn, severally declare on oath that [continue as in preceding form from point marked by a star.]

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